United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland 20814

MEMORANDUM

DATE: March 14, 2007

TO : HSHS

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: Children's Jewelry Containing Lead ANPR

ATTACHED ARE COMMENTS ON THE **CH 07-1**

COMMENT	DATE	SIGNED BY	AFFILIATION
CH 07-1-1	12/08/06	C. Thompson	cmckalip@yahoo.com
CH 07-1-2	12/28/06	Wendy Moyer	pcphwm@mchsi.com
CH 07-1-3	12/28/06	Sara Andreson	sasse222@comcast.net
CH 07-1-4	1/11/07	E. Alpern	liteheart1@aol.com
CH 07-1-5	1/15/07	John Blair	Ecoserve1@aol.com
CH 07-1-6	1/15/07	Tom Neltner	neltner@ikecoalition.org
CH 07-1-7 **(form letter)**	2/06/07	Consumers **Approx 1500 Members**	membership.services@seirraclub.org
CH 07-1-8	2/07/07	Ed Hopkins & Robert Zdenik Alliance for Healthy Homes	Sierra Club 408 C St, NE Washington, DC 2000
CH 07-1-9	2/08/07	Suzanne condon Associate Commissioner Director Sally Fogarty Director	Massachusetts Department of Public Health Center for Environmental Health Center for Family and Community Health
CH 07-1-10	2/17/07	C. Venezia	masteruga15@yahoo.com
CH 07-1-11	2/01/07	Alvin Bowles	abowles@mde.state.md.us

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CH 07-1-12	3/05/07	Students of Seattle University School of Law	walshj1@seattleu.edu
CH 07-1-13	3/07/07	J. Berkelhamer President	American Academy of Pediatrics Dept. of Federal Affairs Homer Bldg, Suite 400 N 601 13th St, NW Washington, DC 20005
CH 07-1-14	3/07/07	Nancy Cowles Exec. Director	Kids In Danger 116 W. Illinois St. Suite 5E Chicago, IL 60610
CH 07-1-15	3/07/07	Ruth A. Norton Exec. Director	Coalition to End Childhood Lead Poisoning 2714 Hudson St Baltimore, MD 21224
CH 07-1-16	3/07/07	Lisa Madigan Atty General	Office of the Attorney General State of Illinois Asbestos Litigation Div. 188 W. Randolph St, #2001 Chicago, IL 60601
CH 07-1-17	3/09/07	Morrie Much General Counsel Michael Lemov Product Safety Counsel	Jackson Kelly PLLC Attorneys At Law 2401 Pennsylvania Ave, NW Suite 400 Washington, DC 20037
CH 07-1-18	3/10/07	Brian C. Lee PhD DABT	991 NE Kirsten Place Corvallis, OR 97330
CH 07-1-19	3/12/07	Guo LiSheng Deputy director General	China WTO/TBT National Notification & Enquiry Center No. 9 Ma Dian Dong Lu, Hai Dian District, Beijing
CH 07-1-20	3/12/07	Thomas Stubbs	2150 Sonora St Pomona, CA 91767
CH 07-1-21	3/12/07	Nick Robb	275 Village Green Rd. Gallatin, TN 37066
CH 07-1-22	3/12/07	Connie Travaille	711 Meadowbrook Dr Spartanburg, SC 29307

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CH 07-1-23 **Form letter**	3/12/07	Consumers (400)	rlundberg3@care2.com
CH 07-1-24 **Ltr dated 3/3/07**	3/12/07	Michelle Loke	W285 N8326 Doe's Nest Ct. Hartland, WI 53029
CH 07-1-25	3/12/07	Anita Weinberg Chair	Illinois Lead Safe Housing Task Force kmackey@luc.edu
CH 07-1-26	3/12/07	Terry Mason Commissioner	City of Chicago Department of Public Works 333 South State Street Chicago, IL 60604
CH 07-1-27 **Follow-up comments**	3/12/07	Ed Hopkins Director	Sierra Club 408 C St, NE Washington, DC 20002
CH 07-1-28	3/12/07	J. Sharfstein Commissioner Olivia Farrow Asst. Commissioner	City of Baltimore Health 210 Guilford Ave. Baltimore, MD 21202
CH 07-1-29	3/12/07	Elliot Burg Asst Attorney General	State of Vermont Office of the Atty General 109 State St. Montpelier, VT 05609
CH 07-1-30	3/12/07	Francis Citera LLP	Greenberg Traurig Attorneys at Law 77 West Wacker Dr. Suite 2500 Chicago, IL 60601
CH 07-1-31	3/12/07	Janet McCabe Exec. Director	Improving Kids' Environment 1201 N. Central Ave, #9 Indianapolis, IN 46202
CH 07-1-32	3/12/07	Michael Green Exec. Director	Center for Environmental Health 528 61st St., Suite A Oakland, CA 94609
CH 07-1-33	3/12/07	Lewis Eidson President	American Association for Justice 1050 31st St, NW Washington, DC 20007
CH 07-1-34	3/12/07	Rachel Weintraub Director of Product Safety	Consumers Union 1101 17th St, NW, #500 Washington, DC 20036

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CH 07-1-35	3/12/07	Ward Stone Wildlife Pathologist	New York State Department of Environmental Conservation Division of Fish, Wildfish, and Marine Resources Wildlife Pathology Unit 108 Game Farm Road Delmar, NY 12054
CH 07-1-36	3/12/07	John Witter	12 Edgewood Dr. New Paltz, NY 12561
CH 07-1-37	3/12/07	Sharon Weiser	3483 Wilson Woods Dr. Columbus, OH 43204
CH 07-1-38	3/12/07	J. Cockerill	91 N. Fork Rd. Silver city, NM 88061
CH 07-1-39	3/12/07	J. Weidenhamer Prof. and Chair	Ashland University JWEIDEN@ashland.edu
CH 07-1-40	3/12/07	Sheila Millar	Keller and Heckman LLP 1001 G St, NW Suite 500 West Washington, DC 20001

lead in jewelry 1

Stevenson, Todd A.

From: Information Center
Sent: Friday, December 08, 2006 8:25 AM
To: 'Catherine McKalip-Thompson'
Subject: RE: lead in children's jewelry

Hello,

We have forwarded your comments to our Office of the Secretary (OS) within the CPSC and they will be considered when the agency makes any future decisions about that matter.

Thank you for taking the time to voice your concerns to us.

mlj

From: Catherine McKalip-Thompson [mailto:cmckalip@yahoo.com]
Sent: Thursday, December 07, 2006 5:05 PM
To: Information Center
Subject: lead in children's jewelry

I was horrified to read in this morning's Washington Post business section (http://www.washingtonpost.com/wp-dyn/content/article/2006/12/06/AR2006120601882.html that you are CONSIDERING banning lead in children's jewelry (hopefully all children's products). What possible reason could there be NOT to ban lead in anything children will potentially put in their mouths?

The Chinese toymaker employees would also likely benefit.

Any economic harm can be absorbed and is certainly not enough to outweigh children's health. I cannot imagine any parent allowing their children to buy or buying for them a product that had lead in it IF THEY KNEW. Which they don't.

Please do the right thing, and work to eliminate lead as well as other immediate, and cumulative hazards to children's health, by banning it from products they are likely to come into contact with.

Sincerely,
Mrs. Catherine Thompson
mother of two boys

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lead jewelry 2

Stevenson, Todd A.

From: Wendy Moyer [pcphwm@mchsi.com]
Sent: Thursday, December 28, 2006 4:46 PM
To: Stevenson, Todd A.
Subject: Hazardous Metal Jewelry

I support your ban of hazardous metal jewelry for children. In my profession we work with new lead poisoned families monthly in monitoring and teaching these families about the life threatening dangers of lead. I am amazed by the lack of knowledge of lead poisoning. My own mother-in-law traveled to Mexico and sent back to my children gum that contained lead. Needless to say that won't be happening again. Thank you for protecting Iowa's children.

Wendy Moyer, RN, CCNC
Page County Public Health
Child Care Nurse Consultant
Hawk-i Coordinator

lead jewelry

Stevenson, Todd A.

From: Sara Anderson [sasse222@comcast.net]
Sent: Thursday, December 28, 2006 5:29 PM
To: Stevenson, Todd A.
Subject: RE: Lead in metal jewelry

I have a now 8 year old girl that was exposed to lead when she was just 1 1/2. We had the house tested where we rented, no lead paint. We had the water tested, no lead. We had the soil tested, no lead. We searched up and down, no jewelry, no toys with lead. The more research the more I learned where they actually put lead and I was amazed. After turning our lives upside down we believe it was the solder that was used to connect the baseboard heat in out house. A handyman with absolutley no training was hired to replace the baseboards for the rental company and he cut them at the soldered joints. That was the only source of lead.

Why am I telling you this? For the simple fact that my daughter had to go to early intervention preschool and have speech and special education help until 1st grade because of what the lead did to her. Her levels got to a 12 that we know off but we suspect much higher. She was tested at 18 months, apparently was high though no one told us. She was re-tested at about 3 1/2 when her lead level was a 9 and we were told not to worry. I then did research and every single symptom my daughter was having could be traced to lead.

Thank goodness she is okay now with a non-existent lead level. However to get to that point she had lots of extra help in education, she even had major dental surgery because the lead stored in her teeth. She had problems potty training with bleeding from the rectum. Again all better now but they could have been prevented.

So PLEASE, PLEASE, PLEASE do not let this happen to another baby. If it does not need to be there then it shouldn't. My daughter has been taught a very harsh lesson at a very young age and if we can just help prevent anyone else from having to go through it then it will be worth it. You would be amazed if you looked to see what they actually put lead paint on or what has lead solder in it. All the childrens toys and I just found out christmas icicle lights had lead warnings! So if we can keep this ban in place I would be all for it.

Thank you for your time.

Sara Andreson
A concerned parent.

Stevenson, Todd A.

From: Information Center
Sent: Thursday, January 11, 2007 8:53 AM
To: 'Edward'
Cc: OS - Office of the Secretary
Subject: RE: Please be more pro-active and timely in protecting our safety

Mr. Alpren,

We welcome your comments and all comments about the agency's future decisions and direction. Your recommendations will be forwarded to the Office of the Secretary (OS) within the CPSC and someone from that office will review your information and file it with any other comments that we have received.

Thank you,

mlj

-----Original Message-----
From: Edward [mailto:liteheart1@aol.com]
Sent: Tuesday, January 09, 2007 7:39 PM
To: Information Center
Subject: Please be more pro-active and timely in protecting our safety

Jan. 9, 2007

To whom it may concern:

I read a recent release from the Sierra Club and while it is a "victory" it really makes me wonder whether you folks take your job seriously, and whether you have a mission statement that has much to do with Protection. Of course I am sure that you were dealing with higher priorities and that is why it took so long for this to happen. But then again it sounds like the Sierra Club needed to spend time, money, and energy, to push on all of you to do your job. Why don't you just do it corretly from the beginning and save all of us alot of energy?

Hope you move in the direction of having enough pride in you Commission and what you should be doing for the Public Safety that you actually perform your job in a more timely manner.

"In response to a Sierra Club petition, the Consumer Product Safety Commission (CPSC) has begun the process of banning lead in children's toy jewelry. A unanimous vote by the CPSC pushes forward a new rule that will judge toy safety solely on total lead content and hold companies accountable for exceeding an acceptable limit. After 14 safety recalls of over 150 million pieces of unsafe jewelry since 2004, the CPSC is finally looking to take definite action."

Sincerely,
Edward Alpern

jewelry lead 5

Stevenson, Todd A.

From: Ecoserve1@aol.com
Sent: Monday, January 15, 2007 6:11 PM
To: Stevenson, Todd A.
Subject: [Possibly SPAM (k):] - Children's Jewelry Containing Lead ANPR - Found word(s) check out in the Text body

It only makes sense to keep lead out of children's toys and jewelry. The threshold should be high and the punishment severe if it is violated.

Check out the Valley Watch website at: *valleywatch.net*

John Blair

800 Adams Avenue
Evansville, IN 47713
812-464-5663

Stevenson, Todd A.

From: Hatlelid, Kristina M.
Sent: Tuesday, January 16, 2007 9:03 AM
To: Stevenson, Todd A.
Subject: FW: Questions Regarding Children's Jewelry Containing Lead ANPR

-----Original Message-----
From: Tom Neltner [mailto:neltner@ikecoalition.org]
Sent: Monday, January 15, 2007 12:25 PM
To: Hatlelid, Kristina M.
Cc: neltner@ikecoalition.org; 'Jessica Frohman'; mccabe@ikecoalition.org
Subject: Questions Regarding Children's Jewelry Containing Lead ANPR

Ms. Hatlelid,

I am one of the authors of the Sierra Club/IKE petition requesting action by CPSC on lead in toy jewelry. Thank you for publishing the ANPR and taking public comments on the issue.

Two questions regarding the scope of CPSC's authority.

Question #11 asks about "the costs and benefits of mandating a quality control/quality assurance program requirement and/or recordkeeping requirement." We fully believe that a program is essential. But does CPSC have the authority to require it? On our review of the FHSA, we could not find any mention of quality assurance or control. For that reason, we asked EPA to use its express authority under TSCA. Was CPSC seeking comments on behalf of EPA?

Question #15 asks for "Information on the lead content and accessibility of lead in non-metallic materials and components used in children's jewelry containing lead including, but not limited to, plastics, rubber, crystals, glass and ceramics." But the ANPR appears to be limited to metal jewelry. If CPSC received convincing comments regarding non-metal jewelry, would it be willing to expand the scope of a proposed rule?

Thanks

Tom Neltner

Stevenson, Todd A.

Form Letter

From: Dick Artley [membership.services@sierraclub.org]
Sent: Tuesday, February 06, 2007 12:48 AM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPRM

Feb 5, 2007

Chairman Nancy Nord

Dear Chairman Nord,

I urge the Consumer Product Safety Commission to ban lead in all toy jewelry. Nearly 300,000 young American children have blood lead levels high enough to cause irreversible damage. Children can be exposed to lead from several sources, but exposure to lead in toy jewelry is clearly unnecessary and avoidable. The CPSC's current safeguards are not adequate to protect children's health. By threatening the health and survival of our children, lead exposure threatens our future generations. We have a responsibility to our future generations to be especially protective of their health and well-being.

There is no safe level for lead in blood.

The CPSC must not allow ANY lead in toy jewelry. Promulgate a regulation to prohibit the addition of lead to the product, and write an enforcement process.

Kids immediatly put small toys in their mouths. Lead in these small toys invites danger.

Sincerely,

Mr Dick Artley
415 NE 2nd St
Grangeville, ID 83530-2257

SIERRA CLUB
FOUNDED 1892

February 5, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
cpsc-os@cpsc.gov
Fax: 301-504-0127

Re: Children's Jewelry Containing Lead ANPR

The Sierra Club and Alliance for Healthy Homes (hereinafter referred to as Sierra Club) is pleased that Consumer Product Safety Commission has initiated a rulemaking action to ban lead in toy jewelry. The Advanced Notice of Proposed Rulemaking lays an excellent foundation for action to protect children from lead poisoning through consumer products such as lead in toy jewelry. Sierra Club submits these comments on the ANPR to help CPSC adopt the most effective rule to protect children and encourages CPSC to expedite the rulemaking process.

I. CPSC Must Not Use 10 µg/dL as an Acceptable Level of Lead

Sierra Club has serious concerns with CPSC's statement that the "scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood (µg/dL) as a level of concern with respect to lead poisoning in children."[1] This statement directly contradicts those made by the U.S. Centers for Disease Control and Prevention and the U.S. Environmental Protection Agency described below. The CDC and EPA statements are more authoritative; more thoroughly documented; and better reflect the actual consensus of the scientific community than the CPSC statement.

If CPSC continues to maintain that 10 ug/dL is an acceptable level of lead in children, it must:

- Explain why it is rejecting the conclusions and statements made by CDC and EPA; and
- Give the specific scientific references that demonstrate that there are no adverse health effects of lead poisoning on children below 10 ug/dL.

[1] CPSC ANPR, 72 Fed. Reg. 921-923, January 9, 2007, p. 921.

Each additional microgram compounds the damage to a child's brain. Many of the children who may be exposed to lead in cheap jewelry are likely to be the same low income and minority children who predominately bear the burden of lead poisoning.[2]

A. Centers for Disease Control and Prevention Position on Lead Level of Concern

As the Sierra Club noted in its petition to CPSC and EPA, the CDC, in its August 2005 "Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention,"[3] states that:

> "In 1991 the CDC recommended lowering the level for individual intervention to 15 µg/dL and implementing communitywide primary lead poisoning prevention activities in areas where many children have BLLs >10 µg/dL. Some activities, such as taking an environmental history, educating parents about lead, and conducting follow-up blood lead monitoring were suggested for children with BLLs of >10 µg/dL. However, this level, which was originally intended to trigger communitywide prevention activities, has been misinterpreted frequently as a definitive toxicologic threshold."
>
> "As the accompanying review of recent studies indicates, additional evidence exists of adverse health effects in children at BLLs <10 µg/dL. The available data are based on a sample of fewer than 200 children whose BLLs were never above 10 µg/dL and questions remain about the size of the effect."[4]

CDC's conclusions make it clear that 10 µg/dL is not a level that CPSC should use as the basis of national action to systematically prevent exposure to lead hazards but is instead the level for which local action is essential.

B. Environmental Protection Agency's Position

EPA's statements are consistent with CDC's not CPSC's assessment. In its January 6, 2006 proposed rule for renovation, repair and painting activities (Proposed RRP Rule), EPA stated that "since 2002, CDC has recommended that a blood lead level of 10 micrograms per deciliter (µg/ dL) be used as a threshold for individual intervention."[5] In its Section 402c Economic Analysis[6] for the proposed rule, EPA concluded that the uncertainty regarding lead's hazards are quite low and that there is no evidence of any

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[2] CDC, Blood Lead Levels – United States, 1997-2002, MMWR, Vol 54, No. 20, page 513. "However, BLLs [Blood Lead Levels] remain higher for certain populations, especially children in minority populations, children from low-income families, and children who live in older homes." At 513.

[3] U.S.CDC, "Lead Levels - United States, 1999-2002", Vol 52 / No. 20, pp 513 to 516.

[4] U.S.CDC, "Lead Levels - United States, 1999-2002" at page 2.

[5] EPA, 71 Fed. Reg. 6, January 10, 2006, p. 1588. See page 1694 citing HHS, PHS, CDC. Managing Elevated Blood Lead Levels Among Young Children (March 2002).

[6] EPA, Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule, 402(c) Economic Analysis, April 2006.

threshold below which lead exposure has no adverse health effects in children. EPA stated:

> "Young children are particularly sensitive to lead, which impairs a child's neuropsychological development (most commonly measured as reduced IQ). Increased blood-lead levels have also been associated with aberrant behavior in school-age children and a decrease in their growth rate and stature. These cognitive and behavioral effects are strongly related to their future productivity and expected earnings. EPA believes there is essentially no threshold for adverse health effects of lead in children. Indeed dose-effect curves for lead effects on children's IQs show a non-linear, inverse relationship with the greatest effects occurring at the lowest detectable blood-lead levels. In an effort to determine what a blood-lead level of concern should be, the Workgroup of the Advisory Committee on Childhood Lead Poisoning Prevention to the Centers for Disease Control and Prevention (CDC 2005a) found that the overall weight of available evidence supports an inverse association between blood-lead levels and the cognitive function of children in the low range of exposure (less than 10 µg/dL blood). The evidence for such an association is bolstered by the consistency across both cross sectional and longitudinal studies in varied settings. Further, the association is not weaker in studies where the populations' mean blood-lead levels are relatively lower (CDC 2005a). Thus, this analysis assumes that there is no evidence of a threshold below which the adverse health effects of lead are not experienced.
>
> "Similarly, U.S. EPA's Integrated Risk Information System (IRIS 2004) concluded: "by comparison to most other environmental toxicants, the degree of uncertainty about the health effects of lead is quite low. It appears that some of these effects, particularly changes in the levels of certain blood enzymes and in aspects of children's neurobehavioral development, may occur at blood-lead levels so low as to be essentially without a threshold."[7]

The consensus of the scientific community, confirmed in EPA's and CDC's statements, is contrary to CPSC's position on the issue. It would be arbitrary and capricious for CPSC to base its rule regarding an allowable amount of lead to which a child may be exposed on a child's tolerance for a blood lead level of 10 µg/dL.

II. CPSC Must Balance the Benefits of Children's Health With the Benefits of Lead in Toy Jewelry.

Lead exposure comes with a cost to a child's health and long-term success in society. EPA and CDC have concluded that there is no safe level of exposure. Therefore, CPSC must balance the

[7] EPA, Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule, 402(c) Economic Analysis, Chapter 5, page 6.

costs of exposure to lead in toy jewelry against the benefits to society of having lead in the product. Sierra Club maintains that the costs dramatically outweigh the benefits so much so that CPSC must act to ban lead in all toy jewelry, not just metal jewelry.

Based on EPA estimates described below, if CPSC's action could keep 10 ug/dL of lead out of the blood of just 200 children, it would save society more than $12 million. This analysis only considers the impact from IQ loss. It does not include the more tangible damage caused by severe exposures that include developmental disability, neurological impairment, violent behavior, and, as we saw last year, death.

EPA's Section 402c Economic Analysis to the Proposed RRP Rule provides helpful guidance to CPSC in this area. EPA evaluated the scientific research regarding the cost of blood lead levels to children at levels below 10 µg/dL. EPA identified two approaches it could use. Using one approach EPA cited research indicating that "the overall estimated decrement in IQ was estimated to be 0.257 IQ points per 1µg Pb/dL increase in blood-lead."[8] Using a second approach, EPA considered research that focused on the enhanced damage of exposure to lead. EPA stated that:

> "The researchers estimated a change of -0.46 IQ points per 1 µg/dL change in child lifetime average blood-lead, based on analyses across the entire range of blood-lead levels found in the study. However, in a separate analysis, they found that children whose peak blood-lead remained below 10 µg/dL exhibited greater IQ loss than those with peak blood-lead levels greater than 10 µg/dL. Using linear models, they estimated a loss of 1.37 IQ points for each increase of 1 µg/dL of child lifetime average blood-lead concentration among this subset of children. Using a nonlinear model, they estimated a loss of 7.4 points per 10 µg/dL increase in child lifetime average blood-lead. (Among children with peak blood-lead above 10 µg/dL, the estimated decrease was 2.5 IQ points as blood-lead increased from 10 µg/dL to 30 µg/dL.) Note that this finding is consistent with Schwartz (1994) who found higher IQ losses among children with blood-lead levels less than 15 µg/dL. This finding was also consistent with Lanphear (2005) who used data from seven longitudinal studies and found that the IQ decrement per deciliter of change was significantly greater among children whose peak blood-lead was below 7.5 µg/dL."[9]

EPA chose to use a change of -0.46 IQ points per 1 µg/dL change in child lifetime average blood-lead as a basis for the expected benefits of the Proposed RRP Rule.[10] But as EPA noted above, the damage to IQ may be three times greater at levels below 10 ug/dL.

EPA concluded that the "estimated value of an IQ point is $12,953 (2005 dollars), which is derived from coefficients provided by Salkever (1995). The IQ value is modeled as the present value of a loss in expected lifetime earnings due to a one point IQ drop."[11]

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[8] EPA Economic Analysis at page 5-20.
[9] EPA Economic Analysis at page 5-20.
[10] EPA Economic Analysis at page 5-21.
[11] EPA Economic Analysis at page 5-22

EPA estimated that each µg/dL of lead in a child's blood costs society $6,000. Protecting 200 children from having an additional 10 µg/dL of lead in their blood would save society $12 million. Given the dubious benefits to society of lead in toy jewelry, CPSC must set the standard for lead in toy jewelry at as low a level as possible.

III. There are No Significant Benefits of Lead in Toy Jewelry

As CPSC considers the impact of lead exposure to children's health, it must compare that impact to the benefits from lead in toy jewelry. While there may be some uses of lead that provide worthwhile benefits, toy jewelry – whether metal or non-metal – is not one of them. Toy jewelry is not an essential commodity. CPSC could – and should consider as an option - eliminate all sales of toy jewelry to protect children. Yet, for metal jewelry, there are safer metals. For non-metal jewelry, there are many safer substitutes for the limited benefits to the physical properties that lead may provide.

IV. CPSC Should Drop Concentration Limit to Ten-Fold to At Least 0.006%

CPSC proposes to use a limit of 0.06% as maximum level of lead in metal toy jewelry. CPSC states that "[i]nvestigations by the CPSC Laboratory staff indicated that the extractability of lead from children's metal jewelry is strongly associated with the lead content of these items. Staff investigations also indicated that when metal jewelry is ingested by children, excess lead exposure is likely for items that contain more than 0.06% lead, and that the amount of exposure likely increases with increasing lead content in the item."[12]

Sierra Club agrees that more lead in metal jewelry means more lead in a child who ingests the jewelry. However, for reasons explained above, it objects to the implication that exposure that results in exposure less than 10 µg/dL is not excess. There is no threshold for lead at which it does not cause adverse health effects. Therefore, CPSC must not arbitrarily set the limit at 0.06%.

Sierra Club believes that CPSC most likely derived the 0.06% level from the standard for paint and other coatings. That level was set by Congress in 1976. On December 1, 1993, CPSC evaluated that level and the "Commission's staff determined that applying the new toxicity data to the exposure assumptions used to derive the 0.06 percent level would result in a lead-limit of 0.01 percent."[13]

Because there is no threshold for lead in blood and the benefits from lead in toy jewelry negligible, Sierra Club believes that CPSC needs to push the level of lead in toy jewelry to the lowest level possible. Not only must the regulation prohibit the addition of lead to the product, it

[12] CPSC ANPR. 72 Fed. Reg. 921-923, January 9, 2007, p. 921.
[13] CPSC, Termination of Regulatory Investigation; Lead in Paint, December 1, 1003, 58 Fed. Reg. 63311.

needs to force manufacturers to adopt quality control procedures that ensure the exclusion of raw materials that have lead added or that have lead as an impurity.

Sierra Club believes that CPSC must provide a 10-fold margin of safety above any threshold level, similar to other regulations designed to protect our children.[14] If CPSC determines that proposed 0.06% is the appropriate value, then it must require that the concentration in products is kept below 0.006%. In keeping with the federal government commitment to eliminate lead poisoning, CPSC needs to do its part to fulfill the goal.

V. CPSC Should Apply More Protective Standards to Surface Coatings

Sierra Club believes that CPSC should apply the concentration cutoff of 0.006% developed by proper methods noted above to revise the existing standard for surface coatings. CPSC has already acknowledged the need to reduce it 0.01%."[15]

VI. CPSC Must Not Preempt State and Local Laws

CPSC rules preempt inconsistent state and local laws. As a result of ongoing problems with lead in toy jewelry that CPSC has not prevented in a timely manner, the States of Illinois and California took action. CPSC must not undermine their leadership to protect children by preempting their provisions that are more stringent.

VII. CPSC Must Require Grinding in Accessible Lead Test

CPSC's staff report that prompted the ANPR states that "testing by CPSC staff indicates that the extractability of lead from children's metal jewelry (using an acid solution to simulate stomach conditions) is strongly associated with the lead content of items. Based on the available test data, staff determined that there was a lower likelihood of ingesting hazardous levels of accessible lead if a children's metal jewelry item had a total lead content of 0.06 percent or less. The Interim Enforcement Policy states that firms can avoid CPSC enforcement action by ensuring that the total lead content of each component of metal jewelry they offer for sale is below 0.06 percent, or that accessible lead is no more than 175 µg."[16] CPSC's staff goes on to say that "as discussed above, preliminary data from staff testing show that increasing the length of the acid extraction period results in increasing accessibility of the lead."[17]

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[14] For example the Food Quality Protection Act of 1996 110 Stat. 1518, Public Law 104-170, 1996, Section 405 amending Section 408(b)(2)(C) of the Federal Insecticide, Rodenticide, Fungicide Act, 21 U.S.C. 346a(b)(2)(C).
[15] CPSC, Termination of Regulatory Investigation; Lead in Paint, December 1, 1003, 58 Fed. Reg. 63311.
[16] CPSC, Letter from Elder and Hatlelid to the Commission, December 4, 2006, page 6.
[17] Id

Sierra Club is pleased to see that CPSC acknowledge the limitation of its Accessible Lead Test. It makes sense that the longer the product is exposed to stomach acids, the greater the extraction of lead from the product will be.

Sierra Club favors a blanket ban on lead in toy jewelry. However, if CPSC allows a company to demonstrate that lead in a product is not accessible using the Accessible Lead Test, it must address other shortcomings to the Test. The Test does not require grinding or abrasion of the product before test to simulate extraction by stomach acids.[18] CPSC fails to consider that children, especially teething toddlers, do not simply swallow a mouthable object. They chew it first. Chewing can damage any protective coating and increase the surface area for extraction.

If CPSC relies on the Test in any form, Sierra Club believes CPSC should require that the product be ground before applying the Accessible Lead Test to simulate chewing by a child. This grinding is similar to EPA's requirement in its Toxicity Characteristic Leaching Procedure which also tries to mimic extraction of metals such as lead (in a sanitary landfill, not a child's stomach).[19] Certainly a child's chewing of toy jewelry before ingestion is more likely to affect the composition of an object than changes caused by grinding in a sanitary landfill.

VIII. CPSC Needs to Establish a Simplified Test to Assess Lead Content in Field

The Accessible Lead Test and Total Lead Test are costly and time-consuming to complete, cannot be used in the field, and are beyond the economic reach of most state and local health departments. These state and local health departments routinely investigate lead poisonings of children. Usually the investigation focuses on lead-based paint. However, due to the apparent pervasiveness of lead in consumer products, their investigations workload have expanded to assess consumer product exposures.

CPSC needs to provide state and local health departments with a method that allows them to quickly assess consumer products, especially toy jewelry, for lead. Sierra Club believes that CPSC should build on the existing infrastructure in the rule. EPA has established a network of laboratories that have demonstrated through initial and ongoing testing that it can reliability conduct assays for lead. This system is called the National Lead Laboratory Accreditation Program (NLLAP). In addition, EPA standards have allowed the use of X-Ray Fluorescent (XRF) devices by trained professionals to measure lead in the field. As a result, there are thousands of XRFs in use in the private sector and at health departments that can be adapted to identify leaded jewelry. They can provide results in less than five minutes with no testing costs other than labor and the cost of the equipment. Finally, the XRF test method is non-destructive. Therefore the consumer product could still be analyzed in an NLLAP accredited lab if needed.

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[8] CPSC,Interim Enforcement Policy for Children's Metal Jewelry Containing Lead – 2/3/05, 2005, www.cpsc.gov/PR/NordLeadToyJewelry.pdf.

[9] EPA, Publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Test Method 311.

Sierra Club believes that CPSC should accept test results when either:

1. A lab accredited by EPA's National Lead Lab Accreditation Program (NLLAP) finds the concentration of any component of the product to exceed 0.006% or the amount exceeds 17.5 µg; or
2. An x-ray fluorescent (XRF) device operated by a person trained to use the equipment determines that the lead level in a component exceed 0.006%.

The presumption can be rebutted by a documented test using the Enhanced Accessible Lead Test performed at any NLLAP lab.

IX. CPSC Must Apply Rule to Non-Metal Jewelry

There is no reason to suspect that a child is less likely to chew on and swallow non-metal jewelry than metal jewelry. A child can be attracted to both. Once in the stomach, accessible lead from non-metal jewelry is just as accessible as metal jewelry – it is a function of the test method.

Therefore, Sierra Club believes that CPSC must:

1. Apply the rule to non-metal jewelry;
2. Use the Enhanced Accessible Lead Test (enhanced by grinding and longer extraction times) to determine whether the product violates the rule;
3. Allow the test methods describe above for metal jewelry be used to create a presumption that can be rebutted by the Enhanced Accessible Lead Test.

This approach minimizes costs while acknowledging that lead in non-metal jewelry may not be as accessible as in metal jewelry.

Please note. Sierra Club believes that CPSC must maintain its ban on lead in coatings and apply this ban to coatings on non-metal jewelry.

X. CPSC Must Require Quality Control Procedures

The significant number of recalls of toy jewelry in recent months is clear evidence that manufacturers and importers are unwilling or unable to prevent the production and distribution of lead in jewelry now that violates existing standards. CDC's report on the Minnesota child that died from lead poisoning after swallowing toy jewelry offered as a "bonus" to buyers of Reebok shoes demonstrated the wide variations in lead concentrations in a single product line.[20]

In its April 17, 2006 petition to EPA and CPSC that lead to this ANPR, Sierra Club asked EPA to

> "work with CPSC to identify the manufacturer or processor that produces any toy jewelry with more than 0.06% lead by weight. If EPA identifies any manufacturer or processor

[20] U.S. Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report. Dispatch. March 23, 2006 / 55(Dispatch);1-2

that it has jurisdiction over using its TSCA authorities, it should immediately issue Section 6(b) quality control orders.[21] In this order, EPA should require the manufacturer or processor to modify its quality control procedures to the extent necessary to remedy the inadequacy."[22]

EPA denied this request. Sierra Club has sued EPA in federal district court to reverse EPA's decision.

Sierra Club maintains that CPSC and EPA should maintain an arrangement where EPA issues a TSCA Section 6(b) Quality Control Order to any manufacturer, processor, or importer subject to a CPSC recall -- whether voluntary or not -- of a consumer product when the Federal Hazardous Substance Act is the basis of the recall. The policy should not be limited to jewelry or lead but should reach all products containing hazardous substances. This mechanism will help prevent repeat violations by an individual manufacturer, processor or importer. It will also serve as an incentive to them to avoid the need for a recall in the first place.

To the extent that CPSC has the authority, Sierra Club believes that CPSC should exercise it through this rulemaking since EPA is unwilling to use its authority to protect children from quality control problems.

XI. CPSC Must Require Retailers to Proactively Act on Recalled Jewelry

Recalls may be effective at getting products off the wholesaler's shelves. They are less effective at getting the product off the retailer's shelves. They are uniformly ineffective at getting the product off a child's shelf, especially for low cost items such as toy jewelry. A system that relies on checking products already in commerce fails to protect the child who bought it before the recall.

Sierra Club believes that CPSC must require retailers who have sold toy jewelry subject to a recall to proactively search their sales records to identify and contact buyers of the recalled product. With the growth of credit and debit card sales and computerized inventory tracking, retailers have the ability to identify some purchasers of these products and notify them of the recall. While this approach will not reach everyone, it is a positive step forward.

XII. Definition of Toy Jewelry

In the recommendations of CPSC staff to the Commission, CPSC staff provided an initial definition of toy jewelry.[23] Sierra Club supports the definition and suggested that it be worded as follows:

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[21] 15 U.S.C.§ 2605(b) (Toxic Substance Control Act, Section 6(b)) (2006)

[22] Sierra Club, Citizen Petition to CPSC and EPA Regarding Lead in Consumer Products, Especially Toy Jewelry, April 17, 2006.

[23] CPSC, Letter from Elder and Hatlelid to the Commission, December 4, 2006, page 5.

Toy jewelry means a consumer product that is used by children for its decorative rather than or in addition to its functional purpose. It includes toy jewelry and the accessory items that children use as jewelry including items that:

1. Accompany toys such as dolls and stuffed animals;
2 Are used in pretend and role-play;
3. Are arts and crafts types of products such as jewelry-making kits; and
4 Are accessories to be worn or used as jewelry in the common sense of that word.

XII. CPSC Must Make 16 CFR 1500.230 Guidance Mandatory

On December 22, 1998, CPSC issued voluntary guidance for lead in consumer products.[24] Based on the number of recalls CPSC has issued since the guidance, clearly the guidance is insufficient. If a company were following the guidance, they would not be putting such products on the market. Therefore, Sierra Club believes that CSPC should revise 16 CFR 1500.230 to require that all manufacturers, importers, and processors of consumer products containing more than 0.006% lead develop a written analysis of such products consistent with the guidance before putting the product into commerce.

If CPSC determines it does not have the authority to require this proactive step, it should work with EPA so that EPA can do it using its TSCA Section 6(a) authority.

XIII. Rule Must be Mandatory and Include Corrective Action

In the Advanced Notice of Proposed Rulemaking, CPSC presented five options:

1. *Mandatory rule*. The Commission could issue a rule declaring children's metal jewelry containing lead to be a banned hazardous substance.
2. *Labeling rule*. The Commission could issue a rule requiring specified warnings and instructions for children's metal jewelry containing lead.
3. *Existing standard*. The Commission could adopt an existing standard, in whole or in part, as a proposed regulation.
4. *Voluntary standard*. If the industry developed, adopted, and substantially conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.
5. *Corrective Actions under Section 15 of the FHSA*. The Commission has authority under section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis if the Commission determines that a product constitutes a banned hazardous substance.[25]

Sierra Club believes that a mandatory rule is needed. The voluntary standard at 16 CFR 1500.230 has been ineffective. The existing standards are too limited and do not adequately

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[24] CPSC, Codification of Guidance Policy on Lead in Consumer Products, 63 Fed. Reg. 245, page 70648, December 28, 1998

[25] Id at page 922.

protect children's health. While labeling may help when parents are involved, the risk is too great for labeling. Children buying the product, as well as some parents, would likely ignore a label.

As noted above, Sierra Club does believe that CPSC should adopt rulemaking that requires two specific actions by companies subject to a recall.

1. The company importing, processing or manufacturing the product shall submit quality control procedures documenting that the problem that resulted in the recall will not happen again; and
2. The retailer should be required to review its sales records to contact all buyers of the recalled product that it can identify.

XIV Response to CPSC Requests

In the ANPR, CPSC solicits a response to 15 specific issues. Sierra Club has answered most of them above but responds specifically to each of them here.

1. *Information on any children believed to have been injured or killed as a result of ingesting metal jewelry containing lead, including the ages of such children, and their BLLs* Sierra Club believes that CPSC should coordinate with CDC and specific request this information from each of the CDC-funded. childhood lead poisoning prevention programs (CLPPPs). The CLPPPs are the state and local agencies most likely to have the meeting. It is unreasonable for CPSC to assume that these agencies would routinely read the Federal Register and should proactively notify them.

2. *The circumstances under which these injuries and deaths occurred, including information on the suspected metal jewelry product.* See answer to #1 above.

3. *The costs to manufacturers of redesigning children's metal jewelry to remove the risk from lead or the cost of removing children's metal jewelry containing lead from the market.* Sierra Club does not have this information.

4. *A description of substitutes for children's metal jewelry containing lead that could reduce the described risk of injury.* Sierra Club does not have this information.

5. *Comparisons of the costs and utility of using lead in children's metal jewelry versus any available substitute products* Sierra Club does not have this information.

6. *Other information on the potential costs and benefits of potential rules.* See Section II above. According to EPA estimates, CPSC save $12 million if it could prevent 10 ug/dL of lead from getting into the blood of 200 children. Sierra Club asks that CPSC also ask the CDC-funded CLPPP programs provide an estimate of their labor and expenses in investigating lead in consumer products such as toy jewelry. It should make this request when it asks for poisoning information.

7. *Steps that have been taken by industry or others to reduce the risk of injury to children due to lead from metal jewelry products.* Sierra Club does not have this information.

8 *The likelihood and nature of any significant economic impact of a rule on small entities.* Sierra Club does not have this information.

9. *Alternatives the Commission should consider, as well as the costs and benefits of those alternatives to minimize the burdens or costs to small entities.* Sierra Club does not have this information.

10. *The costs and benefits of mandating a testing requirement.* Mandating a cost-effective, field-usable instrument such as the XRF above will dramatically reduce the costs to state and local health departments investigating lead poisoning cases where consumer products may be implicated.

11 *The costs and benefits of mandating a quality control/quality assurance program requirement and/or recordkeeping requirement.* Sierra Club does not have this information.

12. *The market share of children's jewelry relative to all jewelry for both precious and costume (non-precious) jewelry.* Sierra Club does not have this information.

13 *The estimated average expected life of a piece of jewelry (precious and non-precious) and/or an estimated number of jewelry pieces in U.S. households.* Sierra Club does not have this information.

14. *The distribution of jewelry sales by manufacturing and/or retail price for both precious and costume (nonprecious) jewelry.* Sierra Club does not have this information.

15. *Information on the lead content and accessibility of lead in non-metallic materials and components used in children's jewelry containing lead including, but not limited to, plastics, rubber, crystals, glass and ceramics* Other organizations will be submitting this information.

Thank you again for your work and the opportunity to present these comments.

Sincerely,

Ed Hopkins
Sierra Club

Robert Zdenik
Alliance for Healthy Homes

408 C ST NE, Washington, DC 20002 TEL: (202) 547-1141 FAX: (202) 547-6009 www.sierraclub.org

Stevenson, Todd A.

From: Tom Neltner [neltner@ikecoalition.org]
Sent: Wednesday, February 07, 2007 5:23 PM
To: Stevenson, Todd A.
Cc: neltner@ikecoalition.org
Subject: "Children's Jewelry Containing Lead ANPR
Attachments: CPSC_Comments_Signed_2-7-07.pdf

Please accept the attached comments on CPSC's ANPR regarding children's jewelry containing lead.

Tom Neltner
Sierra Club

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Tom Neltner
Sierra Club

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The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Center for Environmental Health
250 Washington Street, Boston, MA 02108-4619
Phone: 617-624-5757 Fax: 617-624-5777
TTY: 617-624-5286

February 8, 2007

Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Secretary Stevenson:

The Massachusetts Department of Public Health (MDPH) wishes to express our support for the Consumer Product Safety Commission's (CPSC) proposal to ban children's metal jewelry containing more than 0.06 percent total lead. When the CPSC first proposed a voluntary ban, we believed more needed to be done. Our own independent testing demonstrated that 40% of samples collected by staff at vending machines in Massachusetts contained sufficient amounts of lead to result in childhood lead poisoning. This assumed that a child mouthed the object for 1 hour/day for a period of three months. Due to the lack of existing regulatory authority, we moved forward to contact the retailers that housed these vending machines to take action. We are happy to report that in all cases these retailers took action and had such products removed from their premises. We have expanded our surveillance to include children's jewelry not sold in vending machines and at present are moving forward with a fourth round of jewelry sampling and analysis to determine if intervention, including the possibility of regulatory action is needed in Massachusetts.

In addition to these efforts, we worked closely with industry to provide members of the Retailers Association of Massachusetts (RAM) with important information concerning lead in children's lunch boxes. What was reassuring was the prompt action taken by retailers once sufficient notification was made by our staff. Our research to date demonstrates that voluntary compliance by the business sector is not a substitute for federal enforcement actions.

Sincerely,

Suzanne K. Condon, Associate Commissioner
Director, Center for Environmental Health

Sally Fogarty, Associate Commissioner
Director, Center for Family and Community Health

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Stevenson, Todd A.

From: Chris Venezia [masteruga15@yahoo.com]
Sent: Thursday, February 08, 2007 2:25 AM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR
Attachments: 2406245825-Lead Jewelry Comment.doc

Attached to this e-mail, and included below on the chance that the attachment fails to open, is a comment on the Consumer Product Safety Commission's proposal for a ban on children's metal jewelry containing over 0.06% lead.

Christopher J. Venezia
Second Year Law Student
4501 Sheraton Drive
Apartment 1127
Macon, GA 31210

February 7, 2007

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Room 502
Bethesda, MD 20814

RE: Children's Jewelry Containing Lead ANPR

To Whom It May Concern:

I am responding to the proposed rulemaking regarding the levels of lead in children's jewelry. Having thoroughly read the proposal, I support the banning of all metal jewelry intended for children that contains more than 0.06% lead by weight.

Because of its neurotoxic nature, lead poisoning presents a special harm to young children whose brain and central nervous system are still developing. The current level of concern recognized by the Centers for Disease Control and Prevent (CDC) is 10 micrograms of lead per deciliter of blood (ig/dL), but the CDC has recently began to doubt that any safe level of lead in human blood exists. The New England Journal of Medicine also conducted research in which the effects of lead poisoning - such as reduced IQ, learning disabilities, and behavioral disorders - were observable in children with blood lead levels as low as 5 ig/dL. To absorb this toxic substance into their blood, children need only ingest a lead-containing object or handle such an object near open cut or wound.

When lead is contained in metal jewelry intended for young children, a reasonable foreseeability exists that a child will handle and ingest all or some of the item's lead. Your commission's own staff

investigations have indicated that ingestion of items with more than 0.06% lead can cause exposure exceeding the 10 ìg/dL danger level. At these higher levels of exposure, physicals impairments of hearing loss and kidney damage are likely to occur. When taking into account the prevalence of metal jewelry and charms marketed to children, the likelihood of multiple exposures to lead increases, and because lead does not easily dissipate from a person's body once absorbed, multiple exposures will have a cumulative hazardous effect.

Able to cause substantial physical and mental harm, children's metal jewelry containing over 0.06% lead clearly falls under the definition of a "hazardous substance" under §2(f)(1)(A) of the Federal Hazardous Substances Act (FHSA). The health and safety of young children can best be protected by a mandatory rule banning this hazardous jewelry from the channels of interstate commerce.

Waiting for the children's jewelry industry to develop and adopt a voluntary standard would be inefficient and ineffective for protecting the public's health. As your commission noted in the proposal, nearly 3,000 businesses compose the children's jewelry industry, and of those suppliers, 84% have less than 20 employees. Trying to establish a single standard from this vast number of small businesses would take years of time and would require ceaseless prodding from the commission. The most likely result is that no standard would be developed over the course of many years while high-level lead jewelry products continued to be manufactured and sold to children.

The immediate and mandatory banning of children's metal jewelry containing over 0.06% lead will best serve the commission's goal of protecting public health. As an added benefit, prompt rulemaking will better bolster public confidence in the efficiency of the Consumer Product Safety Commission rather than handing over the standard-making process to the non-elected and unappointed industry leaders.

I thank you for this opportunity to comment on the proposed ban, and I hope that my contribution will help in the rulemaking process.

Sincerely,

Christopher J. Venezia

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MARYLAND LEAD POISONING PREVENTION COMMISSION

March 1, 2007

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814

REGARDING: Children's Jewelry Containing Lead
ANPR

To Whom It May Concern:

The Maryland Lead Poisoning Prevention (LPP) Commission is pleased to comment on the Advance Notice of Proposed Rulemaking on Children's Jewelry Containing Lead. The Maryland LPP Commission has made recommendations to the Governor, Legislature and Maryland Department of the Environment regarding lead poisoning prevention since 1995. Our 19 appointed members (17 appointed by the Governor and 2 by the General Assembly) represent the many affected parties, both in the public and the private sectors, including health care providers, child health advocates, housing advocates, property owners, parents, insurers, and several state and local agencies including Health, Housing, Insurance, Child Care, Education, and Environment and the General Assembly. In our role of providing oversight for the implementation of the statewide plan to eliminate childhood lead poisoning, we have become more aware of the sources of harmful exposure to lead that are not paint related.

Based upon our experience in monitoring the State's lead paint primary prevention laws, we believe that the Consumer Product Safety Commission should use the Mandatory rule option to ban children's jewelry containing lead from the channels of interstate commerce. The Federal government should take this strong action as a first step to prevent further needless and potentially deadly lead exposure. The effects of lead exposure are cumulative and so harmful that we view this and other future actions as necessary to remove lead hazards from our commerce stream.

In the absence of good Federal regulations, Marylanders have been forced to take action to try to ban children's jewelry and cosmetics, such as Kohl, containing lead. In 2006, the Baltimore City Health Department banned children's jewelry with excessive lead content, and the Maryland Attorney General prohibited distribution of a Kohl product that had been found to poison at least 2 children. This year, legislation is currently pending before the Maryland General Assembly prohibiting the manufacture or sale of lead-containing products intended for use or consumption by children.

Additional Federal action is needed to protect all children from unnecessary lead exposure. Manufacturers around the globe must be given the message that their production and worldwide distribution of lead-contaminated products threaten the health of both consumers and the workers who produce them, particularly children who are at greatest risk of permanent impairment due to exposure.

The Commission urges you to take strong and prompt action.

Sincerely,

Alvin L. Bowles
Chairman
Lead Poisoning Prevention Commission

ALB:tas

March 5, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Re: Children's Jewelry Containing Lead ANPR

Mr. Secretary,

We are a group of students of Seattle University School of Law. We are writing due to our concern regarding the agency's proposed rule regarding children's jewelry containing lead.

Our comments are submitted in accordance with section 3(f) of the Federal Hazardous Substances Act ("FHSA") which provides that Consumer Product Safety Commission invites interested persons to comment with respect to the regulatory alternatives being considered. Under the proposed rule, those alternatives include a mandatory rule, labeling rule, existing standard, voluntary standard, and/or case-by-case corrective action under Section 15 of the FHSA.

A. THE RISK OF INJURY DUE TO LEAD TOXICITY IS HIGH

1. Known Risks of Lead Poisoning and Recalls

According to the CPSC, while lead paint is the leading cause of lead poisoning in children, lead exposures from other sources add to the overall risk.[1] The scientific community generally recognizes a blood lead level of 10 micrograms per deciliter (ug/dl) of blood as a level of concern and recommends various lead poisoning prevention activities.[2] To prevent young children from exceeding the 10 ug/dl blood lead level, CPSC states that it is seeking to limit exposure to lead from all consumer products, including children's metal jewelry.[3]

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[1] Press Release, Consumer Prod. Safety Comm'n, CPSC Announces New Policy Addressing Lead in Children's Metal Jewelry (Feb. 3, 2005).
[2] *Id.*
[3] *Id.*

Preschool-age children are more vulnerable to the effects of lead than other segments of the population for several reasons. First, their nervous systems have increased susceptibility to the toxic effects of lead. Second, they are more likely to place their hands in their mouths, thereby increasing the ingestion. Third, the efficiency of lead absorption from the gastrointestinal tract is greater in children than in adults. Finally, nutritional deficiencies of iron or calcium (prevalent to children) may facilitate lead absorption and exacerbate the toxic effects of lead.[4]

According to the Centers for Disease Control and Prevention, most children with elevated blood lead levels do not have any symptoms.[5] However, there is no safe level of lead in blood. As lead levels in blood increase, there is a greater negative effect on children's learning and behavior. A blood test to detect lead is the only way to tell if a child has elevated lead levels in their bloodstream.[6] While merely wearing lead tainted jewelry cannot itself cause a child to have a high level of lead in his or her blood, small children are at an increased risk of ingestion because they often put things in their mouths.[7] The CDC recommends that households with small children make sure that the child does not have access to jewelry or other items that may contain lead. [8]

Children exposed to lead can suffer delayed mental and physical development or even death. In 2006, researchers from U.S. PIRG, a public interest research group, went to just a few stores and easily found four items of children's jewelry that contain high levels of lead, ranging from 1.8% lead to 34% lead by weight.[9] CPSC has recalled more than 150 million pieces of lead-laden children's jewelry since 2004.[10] A 2004 University of North Carolina at Asheville study found that most bracelets, rings, necklaces and earrings bought from big chain stores leached enough lead to cause minor neurological damage with just twenty seconds of daily contact.[11] Most of the jewelry tested was marketed to children. One ring leeched lead at 250 times the federal limit of daily exposure in children younger than three.[12] Additionally, toy jewelry sold in vending machines has also been found to contain levels of lead dangerous to children.[13]

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[4] Richard O. Faulk & John S. Gray, Institute for Legal Reform, *Getting the Lead Out? The Misuse of Public Nuisance Litigation by Public Authorities and Private Counsel* 51 (forthcoming 2007) (citing Center for Disease Control fact sheet on lead), *available at* http://www.instituteforlegalreform.com/pdfs/Lead_article.pdf.

[5] CTR. FOR DISEASE CONTROL AND PREVENTION, LEAD IN TOY JEWELRY: QUESTIONS AND ANSWERS (2006), *http://www.cdc.gov/nceh/lead/faq/jewelry.htm* (last visited on March 2, 2007).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] U.S. PIRG EDUCATION FUND, TROUBLE IN TOYLAND: THE 21ST ANNUAL SURVEY OF TOY SAFETY 5 (2006), *available at* http://www.uspirg.org/uploads/cN/bf/cNbfCJC7KP8spMSQE3B1_w/TroubleinToyland2006US.pdf.

[10] *Id.*

[11] Knight Ridder News, *Lead In Children's Jewelry Dangerous, Researchers Say*, BILLINGS GAZETTE, Dec. 15, 2004, *available at* http://www.billingsgazette.net/articles/2004/12/15/nation/export185422.txt.

[12] *Id.*

[13] CONSUMER PROD. SAFETY COMM'N, LEAD WARNING, *available at* http://www.cpsc.gov/nsn/toyjewel.pdf.

The following list of recent jewelry recalls illustrates the prevalence of dangerous children's jewelry on the market:

- Approximately 300,000 charm bracelets distributed by Reebok International, Ltd. As a free gift with the purchase of children's footwear at major shoe stores nationwide from May 2004 to March 2006.[14]
- Over 700,000 metal charms distributed by Twentieth Century Fox as a free gift with Shirley Temple DVDs, May 2006.[15]
- Over 500,000 pieces of jewelry (Mood Necklaces and Rings, Glow-in-the Dark Necklaces and Rings, and UV Necklaces and Rings) being made for and sold by the Dollar Tree Store and its affiliates, March 2006.[16]
- Juicy Couture cheerleading charm necklaces sold in department stores nationwide between September 2005 and April 2006.[17]
- 180,000 "American Girl" children's jewelry sets, April 2006.[18]

2. Risks Potentially Not Considered by CPSC

The medical reasons for supporting a ban on children's jewelry with high lead levels have been outlined *supra*. The potential damage, neurological, physical, and behavioral, can be easily mitigated by lowering or banning lead in jewelry. Any potential adverse effects to industry or consumer choice would seem to be a small price to pay to save the lives and health of America's children. In order to put these risks in perspective, it is critical to imagine how easy a person's child, niece or nephew, and/or grandchild can be harmed by simply swallowing one of these small lead-containing jewelry.

a. Adoption of a percentage based standard may be fundamentally flawed

According to a 1991 CDC study, a piece of lead as small as a grain of sand could be enough to poison a small child.[19] Thus, it seems that the .06 percent maximum would still allow toxic levels of lead to be introduced to small children. Rather, the weight standard should not be utilized. This would prevent the introduction of larger pieces of jewelry which could contain toxic levels of lead. If there is a recognized standard of 10 micrograms per deciliter of blood, then the .06 percent may be grossly inadequate, as newborn infants only have approximately 1 cup of blood. Their acceptable exposure level would be approximately 20 micrograms. For example, if you have a piece of children's jewelry weighing 10 grams, it could contain .6 grams of lead, which is 30

[14] Faulk & Gray, *supra* note 2, at 126.
[15] Press Release, Consumer Prod. Safety Comm'n, Metal Charms Sold with Twentieth Century Fox DVDs Recalled for Toxic Lead Hazard (May 5, 2006).
[16] Press Release, Consumer Prod. Safety Comm'n, Dollar Tree Stores Inc. Toy Jewelry Recalled for Lead Poisoning Hazard to Children (Mar. 23, 2006).
[17] Press Release, Consumer Prod. Safety Comm'n, Juicy Couture Children's Jewelry Recalled for Lead Poisoning Hazard (May, 10, 2006).
[18] Press Release, Consumer Prod. Safety Comm'n, Recall of American Girl Children's Jewelry (Mar. 30, 2006).
[19] OREGON STATE DEPARTMENT OF HUMAN SERVICES, ABOUT LEAD POISONING, http://www.oregon.gov/DHS/ph/lead/prevent.shtml.

times the recommended level. While, of course, the jewelry wouldn't be digested in full, the .06 percent used in the report doesn't state if that is a single occurrence, or if it accounts for multiple occurrences of ingestion as to the .06 percent safety level. Thus, a child who ingests jewelry containing lead three times over a span of years may be inadequately protected.

b. Adoption of a standard based solely on ingestion leaves serious gaps

The use of ingestion as the sole worry is inadequate. Lead dust may be created any time jewelry with lead in it is worn, rubs, and breaks. The release of this dust may lead to inhalation or other forms of contact not considered by the CPSC. The agency should address the risk of lead dust created by this jewelry within its rule and factor it in.

B. CURRENT POLICY

Currently, CPSC staff test to determine the lead content of each type of component in a piece of jewelry. If the lead content of any component exceeds 600 parts per million, Commission staff then conduct further testing. If an acid extraction test yields an amount of accessible lead greater than 175 micrograms (the amount that could result in elevated blood lead levels in children), CPSC staff decide what corrective action may be appropriate on a case-by-case basis. In making this determination, Commission staff consider the age of the children who are most likely to wear the jewelry, the level of accessible lead, the size and shape of the jewelry components, the probable routes of exposure and other factors.[20]

A significant problem with the current approach is that it merely provides for enforcement of recalls after an injury has occurred and been reported. Considering the degree of risk and potentially devastating results of lead poisoning to children from jewelry, the CPSC should take preemptive action.

C. DISCUSSION OF REGULATORY ALTERNATIVES

1. Adoption of a Voluntary Standard Would Not Resolve the Issue

Issuing a voluntary standard for manufacturers will not lower the threat to children. A manufacturer will most likely create a standard that is best for the company and not our children. Even if the manufacturer voluntary creates a standard, if there is not steadfast rule it is highly unlikely that the manufacturer will abide by the standard, a voluntary standard most likely will not be enforced. In order to make sure that the standard proposed protects our children, the agency needs to make certain that those standards will be upheld by issuing a violation to a company who does not abide by the standard set by the CPSC. If a mandatory standard is not set than the safety of our children is at stake. The health and safety of our children far outweighs the financial

[20] Press Release, Consumer Prod. Safety Comm'n, CPSC Announces New Policy Addressing Lead in Children's Metal Jewelry (Feb. 3, 2005).

impact on the toy and jewelry manufacturers; therefore, CPSC should apply a standard that will not harm children.

The CPSC could allow a voluntary standard developed, adopted, and substantially conformed to by the industries that manufacture metal jewelry.

As the CPSC itself has found with regard to the removal of lead from candle wicks, voluntary industry standards fail. In spite of a voluntary industry agreement originated in the 1970s, candles being sold through the 1990s still contained lead-cored wicks. Realizing that a voluntary ban was not working, the CPSC voted unanimously in 2003 to ban the manufacture and sale of lead-cored wicks and candles.[21]

While children's metal jewelry is not the same industry, an analogy can readily be drawn in the voluntary adoption of lead standards generally. We see little reason why the results would be any different if jewelry manufacturers would be allowed to police themselves. Rather than repeat the debacle of allowing a voluntary ban akin to the one permitted by the candle wick industry, a ban which allowed over 30 years of lead-cored wicks to end up on the public market, in considering this new rule CPSC has the ability to get it right the first time. Getting it right means abandoning a voluntary standard consideration and implementing a mandatory rule.

Issuing a voluntary standard will not decrease the threat the children. Toy and jewelry manufacturers have the choice in how they manufacture their products now. It seems unlikely that they would create a standard that is much different than the existing standards. Moreover, even if a more stringent standard were developed, there no enforcement mechanism within a voluntary standard. There seems to be little use for standards aimed at protecting the health and safety of children if there is no way to ensure that those standards are being upheld. This is a weak solution to the problem, one that would only benefit the toy and jewelry manufacturers.

2. A Labeling Rule is Inadequate within the Present Context

The Commission could issue a rule required specific warnings and instructions for children's metal jewelry containing lead. This option would not adequately address the impetus behind the proposed rule, which is the acknowledgment that when children ingest metal jewelry containing more than 0.06 percent lead, excess lead exposure will likely result. Relying on warning labels would be ineffective in cases of jewelry obtained through vending machines or not in pre-wrapped containers. As the Governor General in Council for Canada noted under Canada's Hazardous Products Act when considering a similar ban on lead in children's jewelry:

> Warning labels posted next to jewellery displays would be of limited effectiveness since they would be separated from the product at point of sale. Retailers believe that such labels would be a considerable disincentive to the

[21] *See* Press Release, Consumer Prod. Safety Comm'n, CPSC Bans Candles with Lead-Cored Wicks (Apr. 7, 2003).

customer to buy. If the jewellery itself were labelled, the labels would have to be so small and inconspicuous as to be ineffective for the purpose of ensuring that children do not interact with the jewellery.[22]

The proposed labeling rule is not an adequate alternative. Issuing a rule requiring specified warning and instructions for children's metal jewelry containing lead will not prevent children from being harmed. Parents assume that children's jewelry would not contain enough lead to harm a child. Therefore, there is a real possibility that any warnings given would be readily discarded or go unnoticed. Even if there was a label and it was read, resulting in no purchase of the jewelry, there is still a risk of harm. For example, a child may come in contact with other jewelry that contains harmful levels of lead.

Even if specified warnings and instructions for children's metal jewelry containing lead would increase the awareness of lead in children's jewelry, this is simply not enough to protect the health and safety of children. Warning labels are affixed to nearly every product, and it is extremely easy for a parent to overlook or disregard them. Moreover, placing a warning label on the product assumes that the buyer can understand the warning itself. It would seem that the jewelry that is more likely to contain lead is jewelry that is less expensive. Children as consumers may not have the cognitive ability to read and comprehend the warnings. Additionally, there is a real probability that those of lower socioeconomic status, and who are not native English-speakers, could come into disproportionately higher risk of harm as they may not understand the warnings. Thus, the people who are most in need of protective measures are those less likely to benefit from this measure. As a whole, this measure fails to provide all the necessary protections for children. This option should not be accepted as the interests of the CPSC can be better served with another option.

3. Adoption of an Existing Standard May be Sufficient

Adopting an existing standard is the next best alternative to a mandatory ban. While banning all children's metal jewelry containing lead as a banned hazardous substance is the best way to ensure that no child will be harmed from lead poisoning, there may be difficulties in showing it is a banned hazardous substance, as defined by the statute. There may be people who do not agree that the slight risk associated with children ingesting jewelry with lead is enough to justify the economic burdens on the industry. If people believe this line of thinking then there are other alternatives to a complete ban. The second best solution would be the Commission to adopt an existing standard that sets stringent restrictions on the acceptable amount of lead that may be contained in children's jewelry. Standards vary from state to state, and between countries.

For example, Canada proposed a regulation that deals with lead in all jewelry, not just children's jewelry. Canada recognized that any jewelry containing lead may

[22] *Children's Jewellry Regulations*, CANADA GAZETTE, June 1, 2005, *available at* http://canadagazette.gc.ca/partII/2005/20050601/html/sor132-e.html.

eventually end up in a child's hand. Therefore, the Canadian proposes a standard that provides limits for all jewelry advertised, imported, and sold in Canada. The CPSC should do the same.

Canada recently established a regulation dealing with lead in children's jewelry, which seems the most in line with the goals of the CPSC. The Canadian regulation provided limits for both lead content and "migratable" or accessible lead for jewelry items imported, advertised, or sold in Canada. Children's jewelry was defined as basically any jewelry that is designed, packaged, produced, or advertised in such a manner as to make it appealing to children under the age of 15. The US standards focus only on children age 6 and under. While those are very vulnerable ages for children, the standards seem to arbitrarily demarcate between 6 and 7 year olds without any justification. While after a certain age children are less likely to put jewelry in their mouths, the CPSC should be trying to protect as many children as possible. Simply because a 15 year old should know better than to put a metal piece of jewelry in her mouth does not mean she should suffer the consequences of lead poisoning when she does so.

4. The Mandatory Rule is Clearly the Best Option

The mandatory rule is the best standard presented. Under this standard there is a clear rule, and if this rule is violated then there is a penalty. If all manufactures had to manufacture jewelry that contains less than 0.06 percent lead, then all jewelry would be safe for children. Considering there have been hundreds of studies that document the harmful effects of lead on children and adults, the CPSC should consider a mandatory standard on all jewelry containing lead despite the cost to manufactures.

Recent developments in private industry indicate that a total ban on lead in children's metal jewelry is not only desirable, but also feasible. This feasibility is illustrated by a recent voluntary phase-out of lead in children's costume jewelry by certain retailers and suppliers operating in California. Pursuant to a settlement agreement with the Center for Environmental Health and the California Attorney General, on January 26, 2006, dozens of retailers and suppliers, among them Walmart, Nordstrom, and Toys-R-Us, agreed to phase out lead in their children's costume jewelry in California. The agreement requires that no company can ship any lead-tainted children's jewelry to a retail store after February 1, 2007, and cannot ship any lead-tainted jewelry after August 1, 2007. Furthermore, retailers must stop selling lead-tainted children's jewelry by September 1, 2007, and must stop selling all non-compliant jewelry by March 1, 2008. That California and the retailers and suppliers entered into this agreement indicates that elimination of lead in children's jewelry is of utmost importance to public health, and that industry can and will comply with mandates of its elimination.

Further underscoring the feasibility of lead elimination is a recent EU study examining the possibility of using lead substitutes in glass manufacture. England's Middlesex University looked at various substitutes for lead in crystal, and determined

that of the materials tested, including zinc, strontium, and titanium, none posed a risk to safety during manufacturing, waste disposal, or product usage stages.[23]

The Commission could issue a rule declaring children's metal jewelry containing lead to be a banned hazardous substance. Of the proposed courses of action, a mandatory rule is the most sound and logical choice. It creates an even and well-defined standard by which all manufacturers of children's jewelry must abide.

We note that most of CPSC's inquiry is directed specifically to children's metal jewelry. We believe the Commission should focus on a more encompassing mandatory rule which bars *all* metal jewelry containing more than 0.06 percent lead by weight. There are many jewelry products not specifically marketed to children, including adult costume jewelry, which can easily end up in the hands (and therefore mouths) of children. To adequately address the Commission's concern for reducing lead exposure in children, a full ban on metal jewelry containing lead is required.

Further, under Section 2(b)(1) of the Commissions enabling statute, 15 U.S.C. 2051, the Commission has been tasked with protecting the public against unreasonable risks of injury associated with consumer products. While it seems logical to focus on children's products when analyzing potential injuries specific to children, in this case that narrow focus will miss the mark and potentially create a false sense of safety.

For the commission to uphold its statutory mandate by reducing or eliminating the risks associated with injuries stemming from children's consumption of metal jewelry containing lead, then *all* metal jewelry which could end up in a child's mouth, including adult costume jewelry, should be banned from containing more than 0.06 percent lead by weight.

5. A Case-by-Case Standard is not Pragmatic or Effective

Finally, the Commission has the authority under Section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis if the Commission determines that a product constitutes a banned hazardous substance.

The incredibly slow pace of investigation and determination of violation would not create an incentive for the industry to follow any guideline. If a company knows that the odds that they will be found to have violated the standard is low and the cost to comply with the standard is high, then economics dictates that they will not comply. This option is also not acceptable and the interests of the CPSC can be better served with another alternative.

This alternative is costly, inefficient, and would require near-constant monitoring by the Commission of the products currently on the market constituting children's metal

[23] Source: Competitive and Sustainable Growth—http://ec.europa.eu/research/growth/gcc/projects/in-action-craft05.html

jewelry. Further, this alternative would not create a reasoned standard by which the metal jewelry industry would manufacture and import its products into the US.

Further, this alternative necessarily means that children's metal jewelry containing lead has already entered the US market, been sold to consumers, and has now injured a child falling under the proposed rule's target. A rule allowing the Commission to take action after an injury has occurred is simply an ineffective implementation of CPSC's statutory mandate.

The CPSC should do whatever it can to stop injury to children rather than waiting for harm to occur before taking corrective measures.

D. FINANCIAL IMPACTS TO INDUSTRY SHOULD NOT BE CONSIDERED IN CHOOSING A STANDARD

First, and foremost, the Commission is not required by the Federal Hazardous Substances Act to consider the economic impacts of its agency decisions. That said, there are financial impacts upon manufactures of the toy jewelry that need to be taken into account by the CPSC before banning the lead jewelry. These financial burdens include the loss of inventory containing lead levels over 0.06 percent, loss of customer businesses that may be unwilling to replace the old jewelry with newer lower lead-containing jewelry for fear of harming its customers, and/or loss of money to change the manufacturing process to lower the lead in their product. Furthermore, many of these manufacturing businesses have a small number of employees. The requirement to change its product may force some of the manufacturers to layoff some of their employees to make up for costs of producing the newer toy jewelry. Despite these financial impacts of a CPSC regulations banning lead levels over 0.06 percent, these costs pale in comparison to the immeasurable loss of single child due to a preventable risk.

In 2003, the Board of Health in Mahoning County, Ohio (population: 252,800), studied the costs to local government resulting from lead poisoning to 279 children in the previous year. This study included exposure resulting from lead paint ingestion, and also included those children with BLL's of 25 micrograms per deciliter, but even at a fraction of the cost the results would be sobering. The Board looked at costs to taxpayers of screening children for lead exposure, providing health care for children exposed to lead, and providing special education for lead-exposed children. Longer-term costs included juvenile justice expenditures and public health expenditures. Conservatively, the Board estimated the costs to taxpayers for current and future expenditures for these 279 children to be $499,484.[24] Assuming these numbers are typical, expanding them to encompass the entire U.S. population yields a conservative estimate of $750 million per year to screen, and treat children for lead poisoning and its ancillary effects on society.

E. CHOICE AND IMPLEMENTATION OF A MANDATORY STANDARD

[24] MAHONING COUNTY DISTRICT BOARD OF HEALTH, WHAT DOES CHILD LEAD POISONING IN MAHONING COUNTY COST TAXPAYERS?, *available at* http://www.mahoning-health.org/pdfs/what%20does%20lead%20poisoning%20cost%20taxpayers.pdf.

The question then becomes what regulatory standard? The notice provides descriptions of three such standards. These standards come from Canada, California, and Illinois. While the California and Illinois standards are completely acceptable, Canada has one provision that we find particularly important. Instead of covering just children ages six and under, the Canadian standard is for children ages fifteen and under. While there is a large difference between a six year old and a fifteen year old, there is little between a child of six and a child of seven. By having the standard set higher than age six, the CPSC would be able to better protect young children who would not be covered by the age six and under requirement.

We respect the CPSC for its efforts to protect children from lead poisoning. We hope that the CPSC will do their utmost to protect them and make a mandatory rule protecting all children ages 15 and under.

The CPSC has the opportunity promulgate rules that protect the nation's children by simply banning a known risk. The CPSC should examine the laws passed in California, Illinois, and Canada and follow suit and make a federal regulation protecting all children. These individual jurisdictions have taken it upon themselves to protect their children from lead poisoning. The only way to ensure the protection of all children is for the CPSC to prevent this dangerous jewelry from ever being sold in America. None of the proposed alternatives to the total ban would provide sufficient protection against lead poisoning. For instance, a voluntary ban on lead would not be followed by the major manufacturers of the toy jewelry because it would not be their best financial interests. Moreover, requiring minimal labels warning parents of the risk inherent from swallowing lead would not protect children because in many instances parents simply give their children change to purchase the inexpensive jewelry without reading any small-print warnings.

F. CONCLUSION

In order for the CPSC to fulfill its duties to promote and protect the health of children, a mandatory ban on children's jewelry containing lead should be issued. Though there will no doubt be financial impacts on the toy and jewelry manufacturing industry, they are slight compared to the trauma the death of a child would cause.

The overwhelming conclusion the CPSC needs to support it the total banning of lead levels over 0.06 percent in toy jewelry. Even though there are many financial impacts the CPSC must consider, there is no amount of money capable of bringing a child back to life due to lead poisoning by a simple piece of toy jewelry. The only question each member of the CPSC needs to answer is: would you want your child to play with jewelry that may cause him/her long-term health problems or worse, death?

Although it may be difficult to quantify the extent of any reduction in lead exposure in children and resulting benefits due to reducing lead in children's jewelry, there is no safe level of lead in blood. Therefore, CPSC should take whatever action

necessary to reduce lead exposure to children. Out of the five rules being considered, the mandatory rule is the one likely to make the most meaningful progress in reducing lead exposure in children.

In order for the CPSC to fulfill its duties to promote and protect the health of children, a mandatory ban on children's jewelry containing lead should be issued.

We appreciate your time and consideration.

Sincerely,
Colin Caywood
Lupe Ceballos
James Goff
Alicia Kikuchi
Kelly J. Mangiaracina
Jacob Sweeney
Justin P. Walsh
Paula H. Wood

Stevenson, Todd A.

From: Justin Walsh [walshj1@seattleu.edu]

Sent: Monday, March 05, 2007 4:42 AM

To: Stevenson, Todd A.

Subject: [FR Doc: E7-00109];[Page 920-922]; Federal Hazardous Substances Act: Childrens jewelry containing lead; injury risk; comment request

Attachments: Children's Jewelry Containing Lead ANPR.doc

TWIMC,

Please find attached a comment on Children's Jewelry Containing Lead ANPR prepared by a group of concerned students of Seattle University School of Law. Thank you for your consideration in this matter.

Justin P. Walsh

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN™

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March 7, 2007

Ms. Nancy Nord
Acting Chairwoman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Dear Chairwoman Nord:

The American Academy of Pediatrics (AAP) urges the Consumer Product Safety Commission (CPSC) in the strongest possible terms to develop a mandatory rule banning children's metal jewelry containing more than 0.06% lead by weight pursuant to the Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* on January 9, 2007.

AAP Has Pressed the CPSC to Ban Lead in Toy Jewelry

As a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults, the AAP has long advocated for more stringent regulation of lead in various settings, including in toys and jewelry. In a letter dated July 1, 2005, the Academy strongly urged the CPSC to reject *any* allowable lead content in any consumer product intended for use with or by children, as *there is no known safe level of lead exposure:*

> Lead is a highly toxic substance, with health effects that are both pernicious and persistent. At present, research indicates that there is no safe level of lead exposure for children of any age. ... The CPSC should therefore move swiftly to require toy manufacturers and importers to guarantee that their products are lead-free and to ban any children's products that contain more than a trace amount of lead.[i]

Approximately one year later, in a letter dated July 27, 2006 AAP reiterated this call for a complete ban on children's products containing more than a trace amount of lead. At that time, the AAP pointed out that CPSC had recalled more than 8.3 million units of children's toy jewelry through ten separate recalls because of health risks posed by lead in the preceding year. The AAP then noted,

> Clearly, the agency's current lead policies are not preventing dangerous and even deadly items from entering the marketplace and falling into the hands of children. The numbers of dangerous toy jewelry and related products in commerce are unacceptable -- the agency is failing in its mission of protecting children."[ii]

Since July 2006 alone, the CPSC has issued at least 9 recalls affecting more than 6.7 million units of children's toy jewelry due to excessive lead content. Since 1998, CPSC has issued 29 recalls involving 157,962,000 pieces of toy jewelry due to high lead levels. These numbers make abundantly clear the utter failure of CPSC's voluntary standard.

To protect the health of our nation's children, nonessential uses of lead, particularly in products to which children may be exposed, must be prohibited. An important step toward this goal will occur if CPSC issues a mandatory standard banning children's metal jewelry containing more than 0.06% lead by weight as a hazardous substance under the Federal Hazardous Substances Act (FHSA). While most organizations acknowledge that the standard of 0.06% lead by weight is not low enough to protect children, this level has already been established as the concentration cutoff for paint on consumer products.[iii] The AAP therefore recommends this percentage as an interim step until a more appropriate cutoff can be determined. The Academy urges the Commission to classify jewelry containing more than 0.06% lead by weight as a banned hazardous substance under the FHSA as a beginning step in moving toward an outright ban on lead in children's products. The AAP offers the following comments to address issues on which the CPSC requested input in the ANPR.

Lead Is Highly Toxic

Lead is well-established as a potent neurotoxin and a particular threat to the developing brain of the young child, with documented negative effects on behavior and permanent loss of IQ points. No threshold for the toxic effects of lead has been identified. When lead accumulates in the body, it is tightly bound to bone and then released slowly over years or decades. Thus, exposures that may be separated by months to years have an additive effect on the body's burden of lead. Acquisition of lead in the body even in small amounts (i.e., amounts that result in blood lead levels <10 μg/dL) contribute to an accumulation of lead and produce the negative effects of lead on children's health and development that last a lifetime.

The impact of lead exposure on cognition in young children at blood lead levels (BLLs) ≥10 μg/dL has been amply demonstrated, and the literature is remarkably consistent. The magnitude of the effect of blood lead on IQ in young children has been estimated as an average loss of two to three points for BLLs averaging 20 μg/dL, compared with BLLs averaging 10 μg/dL. At blood lead levels < 10 μg/dL, the IQ loss is even more striking. Studies on lead accumulation at lower levels report a loss of 4 to 7 IQ points for lead levels that move from 1 μg/dL to 10 μg/dL.

Other toxic effects of lead have been found. Investigators have identified associations between acquisition of lead and weaknesses in attention/vigilance, aggression, somatic complaints, and antisocial or delinquent behaviors. Other adverse neurodevelopmental sequelae that have been associated with low to moderate elevated BLLs include abnormal postural balance, poor eye-hand coordination, longer reaction times, and sleep disturbances.[iv] Further, even small amounts of lead (at levels <10 μg/dL) interfere with sexual maturation in girls, increase the odds of having dental caries, and interfere with heme biosysthesis.[v]

Children Have Been Harmed by Jewelry Containing Lead

Children's ingestion of objects containing lead can place them in danger of both acute lead poisoning and injury from the long-term consequences of elevated blood lead levels. While comprehensive data on the number of cases of acute lead poisoning due to ingestion of children's jewelry and similar products does not exist, a few key cases illustrate the extreme danger these products can pose. One of the CPSC's 2006 jewelry recalls came in response to the death of a four-year-old child from Minnesota who swallowed a piece of a Reebok charm bracelet. Upon investigation, the item was found to be composed almost entirely (99.1%) of lead.[vi] Clearly, that product was ingested by a child and did indeed cause a substantial injury—in that case, a tragic, unnecessary and entirely preventable death due to acute lead poisoning. In 2004, a child in Oregon was recorded as having a BLL of 123 μg/dL after ingesting a necklace with high lead content.[vii] This child required extensive medical treatment, including chelation to prevent possible death. It is unconscionable that our nation continues to permit such deaths and injuries to occur due to a failure to regulate lead in products intended for children.

There Is No Compelling Reason for Children's Jewelry to Contain Lead

Jewelry is a discretionary purchase made by parents or children for entertainment or personal purposes. No parent expects jewelry to be potentially deadly.

The addition of lead to jewelry is not in any way central or even necessary to the function or purpose of the product. Lead is added solely to give jewelry more weight or heft. Because lead is inexpensive, manufacturers may be inclined to add it to cut costs. However, none of these factors represent a compelling rationale for including a poisonous substance in a product specifically designed for use by children.

Metal Jewelry Containing Lead Is a Persistent Threat

Children's jewelry containing lead represents a long-term threat to children's health. Such jewelry may be present in households for years and pose a danger to multiple children in the same family. Even when jewelry is broken, children may still play with its components (beads, charms, etc.) One report determined that 34% of children under the age of 6 years with lead poisoning in Los Angeles County had been exposed to items containing lead that had been brought into the home.[viii]

Furthermore, a large body of research demonstrates that recalls are a singularly ineffective method of removing hazardous products from the marketplace. For FY1996 and FY1997, the most recent years for which data is available, CPSC-reported recall return rates of 18% and 16%, respectively. Even under aggressive programs where buyers can be identified through purchase information or registration cards, recalls are largely unsuccessful.[ix] For toy jewelry, which is often purchased through vending machines or small stores, the recall failure rate can be expected to be much higher. As a result, these hazardous products remain in children's hands.

Finally, the variability of lead content in children's jewelry and similar items makes it virtually impossible for consumers to ascertain whether a particular object may contain high levels. In the

case of the fatal 2006 lead poisoning cited above, the charm ingested by the victim was composed of 99% lead. Similar charms tested by government officials ranged from 0.07% to 67% lead by weight. CPSC must enact a total ban on lead in children's jewelry to eliminate this dangerous unpredictability and confer uniform protection on children.

Economic Concerns Should Focus on Children's Health

The AAP is deeply troubled that much of the CPSC's ANPR focuses on questions related to the costs and benefits to manufacturers of eliminating or replacing lead in children's metal jewelry.

The sole focus of this ANPR should be the elimination of a pernicious health threat to children. The costs to children's health of lead poisoning are extremely high in terms of both human suffering and economic impacts. Given that even low blood lead levels are associated with loss of IQ and other health consequences in young children, a single child with lead poisoning may cause tens or even hundreds of thousands of dollars in costs over a lifetime – not only in direct health care costs, but in increased spending on educational needs and reduced income and productivity over a lifetime. The CPSC should balance the costs to manufacturers against the staggering costs of lead to families, government, and society.

In conclusion, the AAP calls upon the CPSC to enact a mandatory rule banning children's metal jewelry containing more than 0.06% lead by weight as a hazardous substance under the Federal Hazardous Substances Act. The agency's current voluntary standard has been entirely ineffective in stemming the production or sale of children's jewelry containing potentially deadly levels of lead. A mandatory standard is crucial to removing these dangerous products from the marketplace and safeguarding children's health.

The AAP appreciates the Commission's full and deliberate consideration of this matter. If the Academy can be of further assistance, please do not hesitate to contact Cindy Pellegrini in our Washington, DC office at 202/347-8600. We look forward to continuing to work with the Commission to protect the health of our nation's children.

Sincerely,

Jay E. Berkelhamer, MD, FAAP
President

JB:cp

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[i] American Academy of Pediatrics letter to the Consumer Product Safety Commission, July 1, 2005.
[ii] American Academy of Pediatrics letter to the Consumer Product Safety Commission, July 27, 2006
[iii] 15 U.S.C. §2681(9).

[iv]AAP Committee on Environmental Health, "Screening for Elevated Blood Lead Levels," *Pediatrics*, Vol. 101 No. 6, June 1998.

[v] Centers for Disease Control and Prevention. Preventing Lead Poisoning in Young Children. August 2005. Atlanta: CDC; 2005.

[vi] Centers for Disease Control and Prevention. Death of a Child After Ingestion of a Metallic Charm --- Minnesota, 2006. *MMWR* 2006; 55(12);340-341.

[vii] Centers for Disease Control and Prevention. Lead poisoning from ingestion of a toy necklace---Oregon, 2003. *MMWR* 2004;53:509--11.

[viii] Childhood Lead Poisoning Prevention Program. Census/surveillance data. Los Angeles, CA: Los Angeles Department of Health Services; Maternal, Child & Adolescent Health, Childhood Lead Poisoning Prevention Program; 2006. Available at http://lapublichealth.org/lead/reports/leaddata.htm.

[ix] Darlin, Damon. "Reluctance and Silence on Recalls." *New York Times*, October 28, 2006.

Stevenson, Todd A.

From: Arika Pierce [APierce@aap.org]
Sent: Wednesday, March 07, 2007 10:38 AM
To: Stevenson, Todd A.
Subject: Children*s Jewelry Containing Lead ANPR
Attachments: 03-07-07 Lead in jewelry ANPR CPSC ltr.doc

Attached please find comments in response to the January 9, 2007 Federal Register Notice on Children's Jewelry Containing Lead; Advance Notice of Proposed Rulemaking; Request for Comments and Information.

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KIDS IN DANGER℠

A nonprofit organization dedicated to protecting children by improving children's product safety

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March 7, 2007

Office of the Secretary
Consumer Product Safety Commission
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Bethesda, MD 20814

Comments on Children's Jewelry Containing Lead ANPR

On behalf of Kids In Danger, a nonprofit organization dedicated to protecting children by improving children's product safety, I would like to submit these comments in support the rulemaking to ban lead in children's jewelry. Given that most parents already mistakenly believe that lead is banned in any product intended for children, this rulemaking is long overdue.

In 2006 alone, twelve children's jewelry items, representing over 2.2 million units, were recalled: since 2001 that number is much closer to 200 million –products recalled after they had already gotten into the hands of millions of children who may or may not have been poisoned by them. These massive recalls as well as the death of a Minnesota child shows that the current system isn't working.

Lead should be banned from any product a child uses or might put in their mouth. Jewelry clearly falls into this category. Watch any child with a necklace or bracelet and soon enough the chain or pendant is mouthed – even by children above the age of mouthing other products. There is no way that lead can be included in these products and not be accessible to the child. Any coating will wear off over time, exposing the child to the deadly neurotoxin.

We appreciate the recent work CPSC has done in testing and recalling lead-laced trinkets already on the market. But clearly, a strong mandatory standard, along with testing procedures must be in place to prevent the poisoning of children.

Nancy A. Cowles
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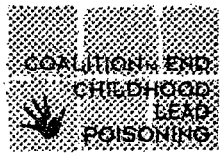

Ruth Ann Norton
Executive Director

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814

Re: Children's Jewelry Containing Lead ANPR
Federal Register Vol. 72, No.5, January 9, 2007

March 7, 2007

Dear Secretary:

On behalf of the Coalition to End Childhood Lead Poisoning, I would like to applaud the CPSC on its examination of lead in children's jewelry and urge the Commission to pursue next steps to strengthen federal powers, limit market availability, and protect families from leaded children's jewelry, as well as other children's items containing lead.

The Coalition to End Childhood Lead Poisoning is a 501c3 nonprofit organization headquartered in Baltimore but working throughout the United States. The Coalition focuses its energies and resources on primary prevention of lead poisoning through policy, direct services, public awareness/education, and lead hazard reduction. As such, we do not collect or track the type of data requested in section G: Solicitation of Information and Comments. However, as an organization founded on family advocacy and grassroots involvement, we would like to share some suggestions for moving forward with rulemaking:

- The Coalition requests that the CPSC bear in mind the normal developmental hand-to-mouth activity of young children; articles not intended for ingestion may be chewed and/or accidentally swallowed, thereby becoming an exposure risk.
- The Coalition encourages the CPSC to pursue the *Mandatory Rule* regulatory approach, in addition to other methods such as labeling requirements. Due to lead's permanent harmful effects on small children, even in small quantities, banning leaded objects is the surest and safest way to prevent exposure.
- The current Federal Hazardous Substances Act pertaining to children's jewelry is insufficient to protect children. Due to the volume and diversity of jewelry articles, it is not a strong enough regulation to prevent hazardous items from reaching store shelves, or worse, children's mouths.

We encourage the CPSC to take immediate, swift and forceful actions to effectively ban the sale or distribution of lead-containing items with foreseeable use or ingestion by children. Thank you for the opportunity to submit our comments. We look forward to seeing additional action on this issue from the CPSC. Meanwhile, please do not hesitate to contact us at any time if we can be of further assistance.

Sincerely,

Ruth Ann Norton
Executive Director

Stevenson, Todd A.

From: Sarah Rudolf [Sarah.Rudolf@leadsafe.org]
Sent: Wednesday, March 07, 2007 5:23 PM
To: Stevenson, Todd A.
Cc: Hatlelid, Kristina
Subject: Children's Jewelry Containing Lead ANPR
Attachments: CPSC ANPR Comments.pdf

Hello,

Attached please find comments from the Coalition to End Childhood Lead Poisoning.

Thank you
Sarah

Sarah Rudolf, MPP
Special Advisor, Policy & Strategic Development
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 8, 2007

Office of the Secretary
United States Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Via E-mail: cpsc-os@cpsc.gov

Re: Children's Jewelry Containing Lead ANPR

Dear Secretary Stevenson:

These comments are submitted on behalf of Illinois Attorney General Lisa Madigan concerning CPSC's ANPR regarding children's jewelry containing more than 0.06% lead by weight. We commend CPSC for its prompt response to the Sierra Club petition requesting the rulemaking, and recommend that the Commission's rule effect a mandatory ban pursuant to the Federal Hazardous Substances Act (FHSA).

The Office of the Illinois Attorney General is greatly concerned with the issue of children's products containing lead because Chicago and Illinois have the most lead-poisoning cases in the nation. Given that the Illinois Department of Public Health estimates that more than 81,000 children are being harmed by lead, we view lead-poisoning prevention as imperative.

I. The CPSC Ban Should be Mandatory

The prevalence and pervasiveness of the lead in children's jewelry, coupled with its profoundly toxic impacts, warrants a mandatory ban rather than a voluntary standard. CPSC has had voluntary guidance for lead in consumer products in place since 1998.[1] Additionally, CPSC has had a policy in place since February, 2005 concerning enforcement under FHSA in cases where children's jewelry is found to contain greater

[1] CPSC, CODIFICATION OF GUIDANCE POLICY ON LEAD IN CONSUMER PRODUCTS, 63 Fed. Reg. 245, page 70648, December 28, 1998.

than 0.06% lead by weight.[2] Yet just within the past year, the following manufacturers recalled almost two million units of toy jewelry for high lead contents: Art Accentz™ Changlz™ Metal Charms recalled 29,000 units of metal charms;[3] American Girl Inc. recalled 180,000 of children's jewelry;[4] Reebok International Ltd. recalled 300,000 units of heart-shaped charm bracelets;[5] Dollar Tree Stores Inc. recalled 580,000 mood necklaces and rings, glow-in-the dark necklaces and rings, and UV necklaces and rings;[6] Oriental Trading Company recalled 25,000 units of beaded photo charm bracelets;[7] Selected Trading Corp. recalled 55,000 units of children's necklaces;[8] Liz Claiborne Inc. recalled 2,800 units of Juicy Couture children's jewelry;[9] and Twentieth Century Fox Home Entertainment recalled 730,000 units of metal charms enclosed with certain DVDs.[10]

In addition, Kids In Danger, a nonprofit organization dedicated to improving children's products safety, reported that between 1990 and 2004 over 152 million pieces of vending machine toy jewelry were recalled because of elemental lead.[11] Some of the toy jewelry contained 30% lead, a level that is over 550 times that which is considered to be toxic in paint and soil.[12] Moreover, of the products with known locations of manufacture between 1990 and 2004, only one was manufactured in the United States. Over 50% were manufactured in China.[13] With the increase in children's products coming from outside the U.S., it is imperative that regulations prohibit unsafe products before they enter the market.[14] In 2005, the two largest recalls were also for dangerous lead levels in toy jewelry.[15] Stravinia Operating Co. recalled 6 million units of children's necklaces and zipper pulls, and Hirschberg Schultz & Co. recalled 2.8 million metal

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[2] INTERIM ENFORCEMENT POLICY FOR CHILDREN'S METAL JEWELRY CONTAINING LEAD, *available at* http://www.cpsc.gov/businfo/pbjewelgd.pdf.
[3] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06093.html, Release #06-093.
[4] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06123.html, Release #06-123.
[5] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06119.html, Release #06-119.
[6] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06118.html, Release #06-118.
[7] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06538.html, Alert #06-538.
[8] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06150.html, Release #06-150.
[9] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06160.html, Release #06-160.
[10] U.S. Consumer Product Safety Commission, *available at* http://www.cpsc.gov/cpscpub/prerel/prhtml06/06156.html, Release #06-156.
[11] KIDS IN DANGER, PLAYING WITH POISON, *supra* note 2.
[12] Id.
[13] Id.
[14] Id., *see* 4-5 and 7-8 (tables for children's products recalled since 1990 for lead paint hazards and elemental lead hazards, respectively).
[15] KIDS IN DANGER, DANGERS AT PLAY: CHILDREN'S PRODUCT RECALLS IN 2005, *available at* http://kidsindanger.org/04v1/publications/reports/2006_Dangers.pdf.

picture frame charms sold at Michael's, Recollections and Hancock Fabrics stores.[16] In both 2004 and 2005, lead levels in the children's products with the highest number of recalls were not discovered until children became ill from lead-poisoning.[17]

As discussed below, the Office of the Illinois Attorney General has enforcement authority under the Illinois Lead Poisoning Prevention Act (LPPA), which we use to the best of our ability to track down lead-containing products. Ultimately, however, the only way to fully protect our children is to take the strongest available measures to ensure that those products never enter the market in the first instance, through an outright federal ban on such products under the FHSA. In the absence of an unequivocal ban, no matter how large our resource outlay to enforce the LPPA, some lead-containing products will inevitably fall through the enforcement cracks and potentially harm children. Enforcement efforts to track down such products puts a severe strain on the resources of our office and other responsible state agencies. The most resource-efficient approach to protecting our children from lead is a strong outright prohibition from the federal government.

The severe and pervasive danger of lead poisoning from children's jewelry, coupled with the enforcement advantages of an outright ban, unquestionably outweigh any benefits from allowing lead in such jewelry. There is simply no functional benefit, besides purported cost savings, to manufacturing children's jewelry with lead as opposed to alternative materials. No child's developmental potential should be jeopardized for the sake of a trinket.

II. CPSC Rules Should Not Preempt More Stringent State Laws

The State of Illinois has taken significant leadership in addressing the issue of children's lead poisoning. In particular, as recognized in the ANPR, the Illinois Legislature last year passed HB 4853,[18] which defines a lead bearing substance as any item containing or coated with more than 600 PPM lead (0.06%). It also broadens the definition of products banned in Illinois based on their lead content (above 0.06%) and use by children to include clothing, accessories, jewelry, decorative objects, edible or chewable items, candy, food and dietary substances. Additionally, PA 94-0879 requires manufacturers to clearly mark with warning labels, products containing excess levels of lead (above 0.06%) that are intended for use by the general public. Our office was proud to support this important legislation.

Although we believe a federal ban on lead-containing jewelry is essential for the reasons outlined above, we believe it is also important that states such as Illinois continue to have the leeway to take a leadership role in protecting children from the dangers of lead poisoning. Accordingly, we request that any rulemaking specifically state that the proposed rules should be construed as consistent with more stringent or expansive state

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[16] Id.

[17] KIDS IN DANGER, HAZARDS OF CHILD'S PLAY: CHILDREN'S PRODUCT RECALLS IN 2004, *available at* http://kidsindanger.org/04v1/publications/reports/2005_ChildsPlay.pdf.

[18] Available on-line at http://www.ilga.gov/legislation/94/HB/PDF/09400HB4853lv.pdf.

restrictions on lead-containing products, and are not intended to preempt such restrictions.

III. CPSC Should Not Rely Upon 10 µg/dL as an Acceptable Level of Lead

The ANPR relies on a blood lead level (BLL) of 10 µg/dL as a "level of concern" with respect to lead poisoning in children. This statement is inconsistent with findings by both the CDC and USEPA that adverse health impacts occur in children at levels < 10 µg/dL. USEPA stated in its analysis of a recent proposed rule, "EPA believes there is essentially no threshold for adverse health effects of lead in children."[19] CDC similarly stated in 2005 that the 0.10% lead level on which CPSC's existing guidelines concerning lead poisoning were based was *not* intended to serve as a toxicologic threshold; it was intended to represent a level at which parents and communities should be alerted to danger and take action to prevent lead-poisoning. CDC's review of recent studies states that there were adverse health effects in children at BLLs <10µg/dL, indicating that 0.10% is not a safe threshold level for lead in children's products.[20]

The .06% proposed standard set forth in the ANPR is based directly on the 10 µg/dL standard. Moreover, the .06% standard was derived based on a clearly insupportable assumption that lead-containing jewelry is the sole exposure pathway for lead. Children are routinely exposed to lead from lead paint, lead leached into water from lead pipes, lead coatings on toys and other children's products, lead in soil, and many other sources. The .06% standard is therefore too high to fully protect children from lead exposure. Indeed, CPSC's own analysis in the context of lead paint regulation supports a far lower standard. In 1992, based on then-recent science supporting reduction of the BLL level of concern from 40 µg/dL to 10 µg/dL, CPSC concluded that the permissible lead level in paint should be reduced from .06% to .02%. Its decision not to do so was grounded in economic concerns.[21] An even lower standard, .005% to .009%, was recommended in an internal CPSC memorandum. [22] This recommendation as well was grounded in the 10 µg/dL standard, which current science has established is excessive as a health-based level.

We therefore recommend that CPSC establish a lead content level significantly lower than .06%. The standard should be as close as feasible to zero lead content, and certainly no higher than the lowest standard recommended over the years by CPSC scientists.

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[19] EPA, Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule, 402(c) Economic Analysis, Chapter 5, page 6.

[20] U.S.CDC, LEAD LEVELS – UNITED STATES, 1999-2002, Vol 52 / No. 20, pp 513 to 516.

[21] 58 Fed. Reg. 18418-01 (April 30, 1992).

[22] Memorandum from Toxicologist Brian C. Lee, Ph.D., to Sandra C. Eberle entitled, Revision of the CPSC 0.06% lead in paint standard (16 CFR Title II Part 1303) (June 22, 1990).

On behalf of the citizens of Illinois, we thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

Ann Alexander

Ann Alexander
Environmental Counsel to Attorney General
Lisa Madigan

Stevenson, Todd A.

From: Dunn, Matthew [MDunn@atg.state.il.us]
Sent: Thursday, March 08, 2007 4:38 PM
To: Stevenson, Todd A.
Subject: Comment letter from Illinois Attorney General Madigan Re: Children's jewelry containing lead ANPR
Attachments: CHILDREN JEWELRY-LEAD - LTR_03-08-2007_15-15-02.pdf

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March 9, 2007

Via E-mail – cpsc-os@cpsc.gov
and First-Class Mail

U.S. Consumer Product Safety Commission
Office of the Secretary – Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: **Response to Children's Jewelry Containing Lead ANPR – 72 FR 920-01**

To the Commission and Members of the Staff:

The National Bulk Vendors Association (NBVA) is pleased to furnish these comments in response to the above Advanced Notice of Proposal Rulemaking (ANPR) regarding lead in products intended for use by children, or accessible to children.

NBVA'S POSITION.

The NBVA fully supports a mandatory federal standard and related ban applicable to the children's products described in the ANPR. We propose, however, a standard broader than the one suggested in the ANPR, which would be applicable to children of any age up to fifteen (15) years and which would apply to some additional children's products.

Your proposal focuses on children's metal jewelry containing lead. The National Bulk Vendors Association supports a mandatory ban of all toy jewelry, children's metal jewelry (however CPSC defines the difference), toys and novelties intended for children up to fifteen (15) years of age, that contain more than 0.06% lead by weight. Nothing less is adequate to protect children and the consuming public.

With this standard, we concur in the elimination of accessibility and extractability tests. Children do strange and unpredictable things with toys—like swallowing them or sucking on them. We believe the low lead content standard is more likely to avoid lead exposure for children, even if the product is abused.

THE BASIS FOR NBVA'S POSITION.

Our industry is geared to children — starting perhaps as young as age three and continuing into their teens. Although teenagers and some adults certainly buy gum, candy, stickers and some novelties from our vending machines, our recommendation and commitment regarding lead content is simple and straightforward:

> Any product that is vended through our machines must be safe for children, even if the buyer is a teenager or an adult.

Four of our suppliers were the subject of a massive voluntary product recall in 2005. They each believed their products were safe for children and were shocked to learn that some of their toy jewelry did not pass tests conducted by the CPSC. While our suppliers routinely tested for lead content before the 2005 voluntary recalls, the CPSC was helpful in explaining that some tests were not being performed by the independent testing laboratories or were being performed improperly. Since then, our suppliers do not rely on coatings to prevent access to lead content. Instead, our suppliers insist on low lead content as the best assurance of safe products. Since 2005, our suppliers have tested exclusively for low lead content by weight.

Most of our suppliers set lead weight tolerances even lower than 0.06% that must be met by all manufacturers. If the sample products produced by a manufacturer do not meet the lower standard, then the product is not ordered. If the lower standard is met, the supplier will order the product with the comfort of knowing that slight differences in a particular batch of a product might exceed the importer's lower lead specifications, but the product will nonetheless come within the 0.06% standard. If a manufacturer elects to produce a product at a different facility, additional tests are required for that facility. If those products do not meet the same lower lead standard, then the noncomplying batch from that facility is rejected.

We are confident in the testing programs of our member suppliers, but we read monthly reports of many voluntary recalls announced by the CPSC of children's jewelry and other products sold over the counter in retail stores. Each of those recalls has a negative impact on our industry — even if the products are not vended through our machines. We believe it is imperative that all products intended for children and young people should be free from lead hazards. We support the Commission's efforts to achieve that common goal.

NBVA INDUSTRY AND ASSOCIATION HISTORY.

The NBVA was formed in 1950 and presently has about 400 members. While there are probably thousands of small operators around the country (many part-time

operators such as firemen and school teachers) that are not members, our membership comprises the vast majority in terms of total sales in the bulk vending industry. Our industry, however, constitutes a tiny portion of the entire vending industry. We generate sales of about $400 million per year — less than 1% of all vending sales.

VOLUNTARY STANDARD.

The NBVA Board of Directors adopted a voluntary Toy Safety Standard on April 22, 2004 that is not limited to metal jewelry but covers all toys, jewelry and novelties sold by members. A copy of the NBVA Voluntary Standard is Attachment A to these comments. Not only are all suppliers required to test their products to assure compliance with applicable laws, but NBVA suppliers are required to furnish the machine owners and operators with the test results when toys or novelties are first shipped. In addition, each operator is required to assure itself that its suppliers have a continuing testing program with an approved testing laboratory. The operators are required to obtain copies of test results — especially with their initial purchase of the products. The operator also must be prepared to produce evidence of compliance with applicable standards and tests upon request from any location owner or other interested party.

This system has worked well for us. No product imported by our suppliers since the adoption of the voluntary NBVA Toy Safety Standard has been recalled. Our suppliers are currently doing the required testing at a relatively moderate expense. In addition, we have attempted to educate operators to ask for these test results from suppliers. The Association wants to make sure that operators buy only from suppliers who conduct the extensive testing required to assure product compliance.

RESPONSES TO CPSC REQUESTS FOR INFORMATION.

- Our products vend for prices as low as 25¢ or 50¢ and as high as $1.00. Since our product costs must be below those amounts, we cannot afford to buy products made of pure gold, silver or other precious metals which do not contain even trace amounts of lead. Therefore, other metal alternatives available to NBVA members will likely contain traces of lead and other elements. Our suppliers strive for products with even less than 0.06% lead by weight, but this cannot always be assured.

- At least 75% of our operators are very small companies with less than four employees.

- Our suppliers can afford the tests for lead by weight. If a product fails these tests, our supplier rejects the product and does not attempt an acid test for accessibility. Therefore, we support a proposal rule that would consider only lead content by weight. From our standpoint, suppliers cannot afford NOT to test and to adhere to an adequate

lead content standard. The risk to our customers – children; and our member's business exposure, is too great otherwise.

- Our suppliers do buy some non-metallic toys and novelties, but for toy jewelry products, some metal is essential.

- The life expectancy of toy jewelry vended from our machines is, we believe, less than a month--perhaps only a day or two.

CONCLUSION.

NBVA fully supports a mandatory CPSC standard and ban precluding sale of any toy jewelry, novelty or other product sold for use by children of up to fifteen (15) years of age containing in excess of .06% lead by weight. NBVA and its member companies would be pleased to furnish further information, or assist the Commission and the staff in any manner necessary in this proceeding.

Respectfully submitted,

Morrie Much
General Counsel

Michael R. Lemov
Product Safety Counsel

2004 Annual Convention
Caesars Palace Hotel
April 22, 2004

NBVA TOY SAFETY STANDARD

ADOPTED APRIL 22, 2004

The National Bulk Vendors Association and each member is committed to promote safe products and safe use of toys and novelties by children and their families.

In order to assure that all toys and novelties are safe for children who are our exclusive customers, the following standard was adopted by the Board of Directors at the 2004 Annual Meeting:

1. All toys and novelties sold through bulk vending machines must comply with applicable provisions of the Federal Hazardous Substances Act and Regulations of the Consumer Product Safety Commission.
2. Every importer/supplier is responsible to assure that each toy or novelty sold to bulk vending operators has passed all applicable tests. The importer/supplier should not restrict laboratories in determining which tests are appropriate.
3. Every toy or novelty must be tested by one of the testing facilities approved by the CPSC, such as Bureau Veritas, Intertech, etc.
   (a) If tested by a foreign manufacturer, the importer/supplier must obtain test certifications of each toy or novelty when first purchased. On subsequent orders for the same products, new tests are not required if the products are made in the same place and the manufacturer certifies that the product was manufactured to the same specifications as the prior shipments.
   (b) Suppliers must maintain annual test certifications for at least 2 years.
   (c) Suppliers will be considered to have represented and warranted to each operator that supplier either has tested each toy or novelty or that supplier has copies of test certifications for each toy or novelty from the manufacturer that confirm compliance with applicable tests.
   (d) Suppliers must furnish copies of the test certifications to operators when the toys or novelties are first shipped to the operator or when requested by an operator.
   (e) Operators should be prepared to produce evidence of compliance promptly upon request from any location owner or other interested party.
4. Every operator is responsible to inquire and determine that each supplier of toys or novelties has a testing program, but the operator is not responsible for monitoring to assure consistent compliance. At the minimum, an operator should request copies of tests on products initially ordered by the operator.
5. All bulk vending machines containing toys or novelties must bear appropriate warning labels for small toys, marbles and balloons.

NATIONAL BULK VENDORS ASSOCIATION
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Attachment A

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Comments on CPSC ANPR for Lead (Pb) in Children's Jewelry

"Children's jewelry containing lead; ANPR: Request for comments and information"
Federal Register 72 (5) 920-922, 9Jan2007.

I. General comments

I applaud the wisdom of the Commission and its staff for bringing forward a long-needed regulatory proposal to prevent hazardous lead (Pb) exposure from children's jewelry. I also thank the Petitioner for initiating the rulemaking considerations to address this insidious public health problem.

The scientific literature describing the serious, adverse health effects of low-level Pb exposure to humans has breadth and depth, as is familiar to the Staff. Recent literature continues to show that there is no risk-free level of Pb exposure *in utero* or directly to children, and that exposure tends to be from multiple sources in a variety of combinations. Leaded consumer products can contribute to the body burden of Pb and cause increases in the incidence and severity of adverse developmental neurobehavioral and reproductive effects. Thus, the control of any of the Pb inputs contributes to the health safety of consumers.

The Commission may only be able to consider the well-being of consumers, but it should realize that non-consumer benefits will also arise from a restriction of Pb in jewelry. Workers who handle, pack, stock, and manufacture jewelry would experience decreased Pb exposure and directly associated reduced risks of health injury. Since leaded jewelry disposal by consumers is typically into the residential garbage system, less Pb will ultimately end up in environmental landfills. Costly Federal compliance and enforcement activities that must be applied whenever a serious case of jewelry Pb poisoning currently occurs, will be conserved in the future over the long-term. Manufacturers will be better able to

compete in geopolitically-defined markets where restrictions on Pb jewelry already exist, such as California, Illinois, and Canada.

II. Scope

Please consider an expansion to all jewelry, rather than only children's jewelry. Inexpensive jewelry may be handed down from adults to children and many children like to dress up in adult makeup, jewelry, and clothing. The handed down jewelry is often worn and scratched, which exposes an underlying leaded base metal. Consumers cannot readily distinguished leaded from non-leaded jewelry.

Older children still have hand-to-mouth and object-to-mouth behavior. The adult GI can absorb >50% of the ingested Pb when the person has not eaten recently. Adults also mouth jewelry, but generally not as often. Quantitative data on these behaviors is scarce. However, it is not unusual to know of an adult who absent-mindedly bites on a ring or bracelet, or holds a pendant in their mouth for a short period.

NCG Freeman, et al- J Exp Anal Environ Epidemiol 11: 501-509 2001.
Env Health Perspect 106: suppl 6 1467-1483 Dec 1998.

Although adults may not show the same adverse health effects as children for a given blood Pb level, maternal Pb retards fetal growth and delays childhood neurobehavioral development. Thus, to guard the children, one must guard the mother against Pb exposure.

III. Risk of toxicity

If 310,000 (1.8%) children already exceed a 10 ug/dL blood Pb, as indicated in the ANPR, then there are a number of concerns.

A. Additional Pb exposure will increase their blood Pb levels, which will result in a greater probability of serious, adverse health effects.
B. Children with marginal blood Pb levels, e.g. 8-10 ug/dL, could be easily bumped into the >10 ug/dL range by much smaller exposures than those with an average blood Pb level.
C. The average blood Pb level is lower than when the 0.06% level for Pb in paint was re-examined during a CPSC regulatory investigation in 1990-1992. This would allow a greater exposure before a 10 ug/dL blood Pb occurs.

CPSC, 1990. Revision of the CPSC 0.06% Lead in Paint Standard. Memo from BC Lee to SC Eberle. Tab C in Briefing Package OS #4367.

CPSC, 1992a. Notice of Regulatory Investigation Requesting Information Concerning Limits for Lead in Paint. Briefing Package OS # .

CPSC, 1992b. 57 *Federal Register*: 18418. Regulatory Investigation: Lead in Paint

In 1988-1989, the identification of a blood Pb level of concern of 10 ug/dL CPSC, CDC, and EPA, was a progressive challenge to the 25-40 ug/dL guidelines that existed previously. Newer health effects data since the turn of the century suggests the level of concern should be lowered to protect the same proportion of children. For example, a blood Pb of 5.1 ug/dL has been associated with adverse reproductive effects (prematurity). Delayed sexual development in 8-16 year old females has been observed at levels between 0.7-21 ug/dL.
http://www.atsdr.cdc.gov/toxprofiles/tp13.html section 3, Health

On the other hand, the average blood Pb level has declined, particularly for children not living in urban, lower socio-economic conditions. While this could be interpreted as suggesting that there is more margin for allowing greater Pb exposure, the Commission should carefully consider whether a risk analysis should be concerned with this at-risk group (and its blood Pb geometric mean and standard deviation) or only the "average" child and maternal values when re-estimating the blood Pb level of concern.

The ANPR states the extractability of Pb from children's metal jewelry is strongly associated with the metal content of these items. The qualifiers for this statement were not indicated. Past data from the CPSC Laboratory and other private laboratories that I have seen show no [parametric] statistical correlation of the extractable Pb and total Pb levels, or between wipe and total Pb levels. However, on a non-parametric basis, metal jewelry components with high extractable or high wipe levels can be associated with high total Pb levels.

Platings, coatings, corrosion, alloy types, and normal wear on jewelry prevent such direct correlations. Manufacturers/retailers may claim that platings or coatings prevent Pb exposure. However, these are not durable methods and underlying Pb becomes exposed. No wear and tear testing is done to assess the efficacy of the plating or coating in preventing Pb exposure. There are also no standard protocols for subjecting jewelry to wear and tear testing in the context of Pb hazard evaluation.

IV. Base metal Pb

CPSC has found a number of jewelry products where the exposed component was deliberately made with Pb, or high Pb alloy. These are obvious Pb hazards and many were the subject of CPSC Compliance actions.

The bulk of Pb-containing jewelry is electroplated or coated. A Pb-Sn (lead-tin) alloy, sometimes with antimony (Sb) is typically used as the base metal (core substrate) since it is less costly than using all precious metal, maintains the heft (mass per volume), and takes plating evenly and smoothly. Pb is typically 60-80% of a jewelry base metal alloy.
http://www.alchemycastings.com/lead-products/jewelry.htm
http://en.wikipedia.org/wiki/Gold_plating

The base metal typically receives multiple platings, which requires transfer to different baths. Some of the common plating metals for jewelry include copper, gold, nickel, rhodium, and silver. The plating stock may also have low levels of Pb, but this does not contribute as much Pb to the product as the base metal As each item is transferred to the next bath, some of the Pb is also transferred from the previous bath. If the baths are not changed frequently, Pb contamination of the platings can occur.

Certainly Pb-free options exist for the jewelry base metals. Tin with copper (Cu), bismuth (Bi), or antimony (Sb) are typical alloys. Pb-free metal jewelry is already on the market. Pb-free solder is well known to the plumbing and electronic appliance industries, especially in light of the European Union's Restriction on Hazardous Substances (RoHS). Pb-free solder is available to the jewelry industry. It requires a bit more technique to work with due to its different melting temperatures and molten adherence characteristics.
http://www.alchemycastings.com/lead-products/jewelry.htm
http://www.jewelrysupply.com/index.php?main_page=advanced_search_result&request_type=NONSSL&search_in_description=1&keyword=lead
http://www.mandarava.com/wholesale/whfantasy_charms.htm
http://www.nationalsolder.com/white_metals.htm
http://en.wikipedia.org/wiki/Soldering

Jewelry companies are already responding to the demand for Pb-free jewelry and many are in transition.
http://www.bellableujewelry.com/shop/index.php?main_page=page&id=3
http://www.countrydutchess.com/AboutUsInformationPages/JewelryContentandMaterials.html

VI. Compliance testing

The quickest and lowest cost measure for Pb in jewelry is to determine the total Pb level of a sample of each component, e.g., clasp, chain, pendant, gem, plastic piece, etc. While this does not directly correspond to the exposure potential, it is reproducible and better fits the needs of the manufacturers. It is also less burdensome to small businesses who may not have in-house or volume-discounted testing services available to them. Additionally, it provides information as to which component is leaded, so that problem sources can be traced and corrective action taken. There are a number of acceptable standard lab methods for dissolving and analyzing Pb from solid components, for example, AOAC 974.02, ASTM E 1613, EPA 3050, AOAC 999.10, Canada PSB C-02.4. Total metal methods are familiar to most environmental or industrial chemical analytical laboratories.

Wipe methods are felt to be more representative of hand-to-mouth exposure, which is part of the route that is expected for adults and children. While there is no standard method of wiping jewelry, the procedures developed at the CPSC Laboratory have served as a base for methods used by other levels of

government and private organizations. Methods designed for wiping Pb dust from horizontal surfaces are sometimes adapted, such as ASTM E 1728 and NIOSH 9100. Because jewelry takes many different forms and the techniques of the sampling technicians can vary widely in rate, pressure, repetitions, wipe material choice, moistening, and direction, the results may be difficult to compare and reproduce.

Extraction methods are believed to represent direct mouthing exposure. This route occurs frequently in children. Extractions are time consuming since multiple batches of extractant are used to prevent saturation of the solutions and the samples must sit for several hours. ASTM F 963 is similar to CPSC Laboratory's method, and is widely used by the toy industry. Similar ASTM methods are found in ASTM D 5517, C 927, and C 738.

VII. CPSC Pb experience

If past CPSC experiences can serve as a guide to future results, a 0.06% limit for the metal components in jewelry will exclude any practical utility for intentionally adding Pb. As the Pb levels fall to a "background" level a potentiation of protection occurs. Two product types from the past include architectural paint and vinyl miniblinds. Architectural paint marketed in the US is formulated regionally and domestically due to the cost of shipping large volumes of a mostly water-containing product. Vinyl miniblinds marketed in the US are imported.

The CPSC regulatory investigation in 1990 noted that in using the information that was available at that time, the allowable Pb level in paint might have needed lowering from 0.06% (600 ppm by weight in the dried film, 16 CFR 1303) to 0.01%. A national market survey by the Staff found that the existing 0.06% regulation had the pleasing effect of lowering the Pb levels in most architectural paints to <0.01% and practically all to <0.02% .

CPSC identified deteriorating vinyl miniblinds as a Pb hazard in 1994-1995. A guidance level of 0.02% Pb was offered to manufacturers in 1996. New vinyl miniblinds have fallen well below this level in CPSC Laboratory testing.

VIII. Other regulatory options

Direct involvement with last year's landmark California Proposition 65 settlement regarding Pb in jewelry leads me to favor the limits in the California State regulation that was later promulgated on the basis of the settlement. For the settlement, the analytical measure (total Pb), component type separation (metal, plastic/rubber, leaded glass), and levels were agreed to by companies representing most of the major jewelry retailers and/or distributors in California and probably the US. Several sessions involving hundreds of attorney and

consultant person-hours, laboratory testing costs, and a professional mediation service went into negotiating the settlement. Compliance with these limits is relatively uncomplicated, allows for fast and easy laboratory testing, and is adequately protective of consumer and worker health.
http://ag.ca.gov/newsalerts/release.php?id=1288&year=2006&month=4
http://ag.ca.gov/prop65/pdfs/amendedConsent.pdf
http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_1651-1700/ab_1681_bill_20060922_chaptered.pdf

Addressing non-metallic leaded jewelry components in a Federal proposed rule is rational. Plastic (probably polyvinylchloride) nicks and wears faster than the metal. Some leaded vinyls release surprising Pb amounts on wipe sampling when the product is new. As the plastic deteriorates, it is anticipated that release may accelerate from those vinyls. Leaded plastics are not currently specifically-regulated in consumer products.

Intentionally leaded glass is used in inexpensive jewelry to add sparkle. While it may release little Pb upon wiping, extractable Pb can be significant. It is not clear whether this is related to the softness of the material, surface porosity and imperfections, or general quality of the material. Since glass "crystal" can be heavily leaded, i.e. >24-56%, and an item typically has multiple settings, mouthing these can contribute to Pb exposure.

Labeling jewelry would provide inadequate consumer safety protection. Labels or information literature are likely to be discarded, lost, and often ignored when accompanying jewelry. Consumers will not be able to distinguish leaded from non-leaded jewelry without testing it once the labeling is lost. Labeling is also not an appropriate warning method for children who may lack the ability to understand the wording, yet the jewelry can be purchased directly by children.

When an industry contains many small producers and is as fragmented as indicated for jewelry manufacture, development of a voluntary standard by a representative number of participants can be difficult. Small producers generally do not have the resources to participate in voluntary standard development.

Three CPSC statements are recommended for clarification to consumers and manufacturers.
A. The continued relevancy of the CPSC Pb in paint 0.06% standard to jewelry.
B. Advice on whether a new CPSC rule would supercede existing state regulations (California and Illinois).
C. Applicability of a new CPSC rule to jewelry used in a school play and jewelry used in a commercial theatrical production.

IX. Conclusions

I approve of the Commission's direction in proposing a regulatory limit for Pb in children's jewelry. Expanding the scope to all jewelry would enhance consumer health protection and is important to fetal and childhood developmental growth. The precision of the proposed Pb limit may not be too critical since potentiation of protection will occur when Pb levels drop well below the regulatory limit. Nevertheless, if the limit is to be based on a blood Pb level of concern, adjustments may be desirable based on recent scientific information about the toxicity of low-level Pb exposure and at-risk populations. Additional limits for non-metallic leaded jewelry components are necessary complements to reduce Pb exposure from the whole product.

X. Qualifications

Brian C. Lee, PhD is a certified Diplomate in general toxicology by the American Board of Toxicology. His graduate training at the University of Cincinnati Kettering Laboratory was in essential trace metals and histopathology, followed by postdoctoral research in experimental histopathology in the forerunner of the Linus Pauling Institute at Oregon State University. The subsequent decade of Federal service was with the US Consumer Product Safety Commission as a toxicologist who evaluated several heavy metal-related product hazards. He joined Hewlett Packard Co. to assist in bringing their inks into chemical regulatory compliance and to address consumer exposure concerns.

Dr. Lee is the owner and principal of Good Afternoon Toxicology Consulting, LLC, an independent toxicology consultancy. During the last 7 years, GATC has engaged in product-related consulting for mainly state regulatory agencies, law firms, environmental organizations, art safety organizations, and manufacturers.

Dr. Lee's comments were generated independently and were not contracted or requested by any other entity. Before making comments on this ANPR, the advice of CPSC Ethics Counselors Alice O'Brien and Page C. Faulk was sought and followed.

Stevenson, Todd A.

From: Brian C. Lee, PhD DABT [bclee@peak.org]
Sent: Sunday, March 11, 2007 7:24 PM
To: Stevenson, Todd A.
Subject: CPSC ANPR Pb children's jewelry comments

Attachments: CPSCjewelryPbANPR.doc

CPSCjewelryPbA
PR.doc (267 KB).

Comments attached in Word 2000 format for the ANPR on lead in children's jewelry. It may be helpful to the Commission and Staff to click on the URLs and include the webpages with my comments.

Brian

Good Afternoon Toxicology Consulting, LLC Corvallis OR

Stevenson, Todd A.

19

From:	wtotbt [tbt@aqsiq.gov.cn]
Sent:	Monday, March 12, 2007 4:57 AM
To:	ncsci@nist.gov; Stevenson, Todd A.
Cc:	wtonoti@mofcom.gov.cn; liuna@mofcom.gov.cn; guoxy@aqsiq.gov.cn; wto@aqsiq.gov.cn; qiny@aqsiq.gov.cn
Subject:	Comments from China on USA Notification G/TBT/N/USA/232
Attachments:	Fax of Comments on USA232.pdf

Dear Sir or Madam,

We appreciate the opportunity to submit comments on this regulation proposed by Consumer product Safety Commission (CPSC).

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of comments by e-mail to tbt@aqsiq.gov.cn.

Thank you very much in advance for Consumer product Safety Commission (CPSC) taking our comments into consideration.

Best regards

Guo LiSheng

Deputy Director General

China WTO/TBT National Notification & Enquiry Center
No. 9 Ma Dian Dong Lu, Hai Dian District, Beijing
Post Code: 100088

3/12/2007

Tel: 86-10-82260611/0618

Fax:86-10-82262448
E-mail: tbt@aqsiq.gov.cn

中国 WTO/TBT 国家通报咨询中心

China WTO/TBT National Notification & Enquiry Center

No.7, Ma Dian Dong Ave, Hai Dian District, Beijing, China, Tel: 86 10 8226 0618 Fax: 86 10 8226 2448

FAX

TO: Anne Meininger WTO TBT U.S. Inquiry Point National Center for Standards and Certification Information National Institute of Standards and Technology 100 Bureau Drive, MS-2160 Gaithersburg, MD 20899-2160	Fax: 301-926-1559 Tel: 301-975-4040 or 301-975-2921 E-mail: ncsci@nist.gov or anne.meininger@nist.gov
The Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814 USA	Fax: +(301) 504-7923 +(301) 504-0127 Tel: +(301) 504-7254 E-mail: cpsc-os@cpsc.gov
Date: March 12, 2007	**Number of pages:** 3+1
Copies:	
Department for WTO Affairs, Ministry of Commerce of P.R.China	Fax: +86 10 65197726;65128304 E-mail: wtonoti@mofcom.gov.cn liuna@mofcom.gov.cn
Permanent Mission of P.R. of China to WTO	Fax: +41-22-9097699/9097688 E-mail: guoxy@aqsiq.gov.cn
WTO Affairs Office, General Administration for Quality Supervision, Inspection and Quarantine, P.R.C.	Fax: +86 10 82260553 E-mail: wto@aqsiq.gov.cn
Department for Supervision on Inspection, AQSIQ of P.R.China	Fax: +86 10 82261949 E-mail: qiny@aqsiq.gov.cn
From:	
China WTO/TBT National Notification & Enquiry Center, Standard and Regulation Researching Center, AQSIQ, P.R.China.	Tel: 86-10-82260618 Fax: 86-10-82262448 E-mail: tbt@aqsiq.gov.cn
Subject: **Comments from China on USA Notification G/TBT/N/USA/232** Children's Jewellery Containing Lead ANPR	

Comments from China on USA Notification

G/TBT/N/USA/232

Children's Jewellery Containing Lead ANPR

Dear Sir or Madam,

We appreciate the opportunity to submit comments on this regulation proposed by Consumer product Safety Commission (CPSC).

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of comments by e-mail to tbt@aqsiq.gov.cn.

Thank you very much in advance for Consumer product Safety Commission (CPSC) taking our comments into consideration.

Best regards

Guo LiSheng
Deputy Director General
China WTO/TBT National Notification & Enquiry Center
No. 9 Ma Dian Dong Lu, Hai Dian District, Beijing
Post Code: 100088
Tel: 86-10-82260611/0618
Fax:86-10-82262448
E-mail: tbt@aqsiq.gov.cn

COMMENTS FROM CHINA ON USA NOTIFICATION

G/TBT/N/USA/232

Children's Jewellery Containing Lead ANPR

The Government of China appreciates the USA Government for allowing other Members to make comments on Notification G/TBT/N/USA/232. After reviewing the notified regulation, we would like to give our comments as follows:

1、The draft stipulated that the lead in the children's metal jewelry must be less than 0.06 percent, but we consider this request is insufficient from scientific standpoint. For example: if the lead exist only in the substrate, but not in the coat, the content of lead may exceed the limit of 0.06%. Otherwise, actually the lead protecting by the coat will be emerged from the substrate difficultly, and do little harm for children. In addition, it is known that the content of soluble lead is not equal to the total content of lead in the exposed metal substrate. Usually, the content of soluble lead is much less than the content of total lead. So, the limit of 0.06% is not strict and unreasonable.

In summary, according to Article 2.2 of TBT Agreement, *"Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products"* , We suggest USA make a sufficient risk evaluation on all kinds of preconditions, to avoid the unnecessary obstacles to trade. Otherwise, we suggest USA cancel the provision.

2、It is provided in the draft that the content of lead in the children's metal jewelry is measured by the percent of total lead. However, there is an existing determination method about lead content in the international standard ISO8124. Furthermore, it is more reasonable to use the lead dissolve output target for expressing the degree of lead harm to the children. According to Article 2.4 of TBT Agreement *"Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations"*, we suggest USA adopt the lead dissolve output target described in toy security standard-ISO8124 to institute the limit.

3、We agree with the viewpoint of USA of protecting the children's healthy and safety. And we consider that the method of stick warning mark on the children's metal jewelry, which will enhance the parents' direction of Security guardianship, may be more efficient than setting the limit of lead content. Therefore, we suggest USA use the warning mark in terms of age group according to the toy service conditions.

4. The definition and range of the children's metal jewelry are not specific in this draft, this may lead to an expanding range of correlative products, and increase the cost of producing and inspection of the manufacturers of children's metal jewelry, and bring unnecessary obstacles to trade. According to Article 2.2 of TBT Agreement,"*Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.*",we suggest USA further clarify the definition of children's metal jewelry, the reasonable range and sort of the covered product.

Comments in Chinese is as below:

中国政府感谢贵国给予评议 G/TBT/N/USA/232 通报的机会。经过对贵国通报内容的研究，我方具体评议意见如下：

1、本法规要求对儿童用金属性珠宝饰品的铅含量指标按重量的 0.06%设限，我方认为此项要求的科学性存在一定的不足，例如：如果儿童用金属性珠宝饰品的涂层中不含铅，而基体中含铅，虽然铅的含量按重量计算在 0.06%以上，但是，基体中的铅有涂层的保护，很难直接暴露，对儿童造成的铅伤害的风险也极小。另外，众所周知，即使暴露的金属基体中总铅含量也并不等同可溶性铅含量，通常情况下的可溶性铅含量远远低于总铅含量。因此，0.06%的限值是不科学的，缺乏严谨性。

综上所述，根据 TBT 协定第 2.2 条"*技术法规对贸易的限制不得超过为实现合法目标所必需的限度，同时考虑合法目标未能实现可能造成的风险。此类合法目标特别包括：国家安全要求；防止欺诈行为；保护人类健康或安全、保护动物或植物的生命或健康及保护环境。在评估此类风险时，应考虑的相关因素特别包括：可获得的科学和技术信息、有关的加工技术或产品的预期最终用途*"的规定，我方建议贵方在充分考虑各项前提之下，对可能造成的风险进行评估，避免对贸易造成不必要的障碍。否则，请贵方取消相关规定。

2、本通报指出，儿童用金属性珠宝饰品中的铅以总铅含量计。然而，目前国际标准 ISO8124 中已存在铅指标的判定方式，况且使用铅溶出量指标来表达铅对儿童健康伤害的风险更加合理。根据 TBT 协定第 2.4 条"*如需制定技术法规，而有关国际标准已经存在或即将拟就，则各成员应使用这些国际标准或其中的相关部分作为其技术法规的基础*"的规定，我方建议贵方按照 ISO8124 玩具安全标准中的铅溶出量指标来进行判定。

3、我方非常赞成贵方保护儿童健康和安全的观点。同时认为，在儿童用金属性珠宝饰品上加贴警示标识，由此达到加强父母对儿童安全监护方面的指导，比限定铅含量更为有效。因此。我方建议贵方根据玩具具体使用情况，按年龄组加贴警示标识。

4、本草案中，儿童用金属性珠宝饰品的定义和范围不够明确，这可能造成商品范围的扩大，增加儿童金属性珠宝饰品制造商的生产和检测成本，对贸易造成不必要的障碍。根据 TBT 协定第 2.2 条"*各成员应保证技术法规的制定、采用或实施在目的或效果上均不对国际贸易造成不必要的障碍*"的规定，我方建议贵方进一步明确儿童金属性珠宝饰品的定义和合理的覆盖商品范围及类别。

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Stevenson, Todd A.

From: Thomas Stubbs [thomasstubbs@hotmail.com]
Sent: Monday, March 12, 2007 6:52 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

Dear Nancy A. Nord,

As an artist who uses lead carbonate and lead tin yellow in my paints I find it appalling that you would even consider making an exception where children are concerned. I make damn sure that my children are never anywhere near my paints knowing how vulnerable they are. Toy companies concerned with the bottom line over safety should be put out of business. The CPSC has probably been corrupted by Repiglicans as was everything else. Recently lead was banned from paint products so why are you idiots making an exception where our children are concerned? Who in the Hell do you think you are?

Sincerely,

Thomas Stubbs
2150 Sonora St
Pomona, CA 91767-2413

Stevenson, Todd A. 21

From: Nick Robb [shadomar79@hotmail.com]
Sent: Monday, March 12, 2007 8:02 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

Dear Nancy A. Nord,

I was shocked to learn that the Consumer Product Safety Commission not only allows companies to produce and market children's jewelry containing lead, but that the Commission is considering allowing the very companies who stand to profit from marketing these toys to decide whether or not to warn parents of the danger.
As the arbiter of safety for the toys our children play with and the products we use, I respectfully request that the Commission set a high standard in order to prevent further injuries and death from these dangerous products.

In this nation, over 300,000 children suffer from high levels of lead in their blood, causing brain damage, lower IQs, hyperactivity, developmental delays, and even death. Over the past seven years, more than 20,000 children visited emergency rooms as a result of ingestion of jewelry, and although we do not know how many of those pieces of jewelry contained lead, there is no reason to subject children
to that risk.

For that reason, I urge you to institute a mandatory rule declaring children's metal jewelry containing lead to be a banned hazardous substance. Given the seriousness and pervasiveness of the problem, a voluntary rule is not enough.

As well, given the number of serious instances that have come to light, I urge you to institute these rules as quickly as possible, and initiate a public education campaign to make parents and caregivers aware of the danger in existing toy jewelry.

I might even have relatives with children that don't even know this and they might even be in danger themselves. How could you be doing this to them.

Sincerely,

Nick Robb
275 Village Green Rd
Gallatin, TN 37066-8248

22

Stevenson, Todd A.

From: Connie Travaille [clt@travailleclan.com]
Sent: Monday, March 12, 2007 6:42 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

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As well, given the number of serious instances that have come to light, I urge you to institute these rules as quickly as possible, and initiate a public education campaign to make parents and caregivers aware of the danger in existing toy jewelry.

I work with a child who is the victim of lead poisoning. Her life will always be difficult because of stunted growth, speech difficulties, learning disabilities, behavior problems - caused by the lead poisoning. This problem in our country has to be stopped.

Sincerely,

Connie Travaille
711 Meadowbrook Dr
Spartanburg, SC 29307-2539

Form Letter

23

Stevenson, Todd A.

From: Michele Glenn [micheleglenn@hotmail.com]
Sent: Monday, March 12, 2007 8:32 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

Dear Nancy A. Nord,

I was shocked to learn that the Consumer Product Safety Commission not only allows companies to produce and market children's jewelry containing lead, but that the Commission is considering allowing the very companies who stand to profit from marketing these toys to decide whether or not to warn parents of the danger.
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For that reason, I urge you to institute a mandatory rule declaring children's metal jewelry containing lead to be a banned hazardous substance. Given the seriousness and pervasiveness of the problem, a voluntary rule is not enough.

As well, given the number of serious instances that have come to light, I urge you to institute these rules as quickly as possible, and initiate a public education campaign to make parents and caregivers aware of the danger in existing toy jewelry.

Sincerely,

Michele Glenn
5221 Pond View Dr
Jacksonville, FL 32258-3425

March 3, 2007

Ms. Nancy Nord, Acting Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Lead in Children's Toys and Jewelry

Dear Ms. Nord,

Since May of 2004, I have been testing children's toys and jewelry for lead and trying to get the federal law changed to ban lead in these items. Senator Feingold recently contacted your office on my behalf regarding this. In May of 2006, I won a National Prudential Spirit of Community Award for my work.

Recently I read that your office is moving toward banning lead in children's toys and jewelry. I urge you to move forward quickly with this process and commend you for recognizing this serious problem.

I have contacted numerous senators and representatives about this issue and requested that they support your efforts.

Thank you.

Sincerely,

Michelle Loke

262-538-2642
W285 N8326 Doe's Nest Ct.
Hartland, WI 53029

Michelle Loke
Freshman at Arrowhead High School
Hartland, Wisconsin

March 9, 2007

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway Room 502
Bethesda, Maryland 20814

To Whom it may Concern:

Re: Children's Jewelry Containing Lead ANPR

The Illinois Lead Safe Housing Task Force urges the Consumer Product Safety Commission (CPSC) to adopt a mandatory rule banning children's metal jewelry containing more than 0.06% lead by weight pursuant to the Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* on January 9, 2007.

The Task Force was established to develop and implement workable strategies to eliminate childhood lead poisoning, advocate for policy reform, and foster collaborations to achieve its mission. The Task Force is an alliance of public, private, and not-for-profit organizations including community based agencies, property management and realtor associations, insurance industry, health and housing groups, universities, and children's health and welfare agencies, tenant organizers, physicians, attorneys, and parents of children who are lead poisoned.

Illinois has the highest numbers of lead poisoned children in the nation. In an effort to address this problem, last year the General Assembly passed Illinois' first prevention-driven law to protect children from becoming lead poisoned. Much thought went into the law, and it reflects recommendations made by an Advisory Council to the Governor and General Assembly on prevention-driven legislation. The new Illinois law includes a provision prohibiting the sale of jewelry that is used by or intended to be chewable by children if any piece of the jewelry contains more than .06% lead by weight. Contrary to the summary in the Advance Notice of Proposed Rulemaking, which incorrectly states that the law applies to children 6 and younger, Illinois' law declines to define "children," for purposes of the provision that covers jewelry. This is because the law contemplates the reality that small children do not only have access to toys and jewelry designed specifically for their age group. Anyone who has spent time with children can imagine the toy box, the playroom, or the bedroom shared by siblings where it would be impossible to categorize toys by age, and would require superhuman vigilance to keep the 7-year-old's toys permanently out of the 4-year-old's hands. Jewelry products marketed to pre-teens appear, to a toddler with mouthing behavior, like any other toy made for kids. Unless a costly item, children and parents are not likely to be

able to distinguish between an item that is intended for children six years and younger, and one intended for only older youth and adults.

There is no compelling reason for children's jewelry to contain lead. Children's jewelry containing lead represents a long-term threat to children's health. Lead poisoning is one of the few causes of social and learning problems we know how to prevent. To compromise on a ban would serve no benefit, but would significantly harm the lives of many children and families.

The CPSC offers four alternatives. Only the mandatory rule alternative would be effective.

Labeling is not sufficient. It is unrealistic to expect that a labeling rule would keep lead-bearing jewelry out of the hands of young children. While labels may warn parents of lead in jewelry and its potential harm to children at the time of purchase, it would be impossible to ensure that once out of its packaging and among other toys, lead-bearing jewelry stays out of children's hands. This is especially true for younger children for whom mouthing behavior is commonplace. These are also the exact children whose developing bodies are most susceptible to the effects of lead poisoning. Furthermore, it is unrealistic to expect parents to practice heightened caution with their children regarding products that are made *for children*. It is reasonable for parents to expect that a product made for a child is free of hazardous substances that could poison or kill their child. A label is unlikely to overcome this perfectly reasonable expectation.

Most existing standards are not sufficient and have placed too many children at risk. Most existing state laws have yet to target, precisely enough, the bulk of jewelry that is most dangerous to children. If the CPSC were to adopt California's standard, which only holds children's jewelry *for children under age 6* to the .06% lead by weight requirement, metal jewelry made for or marketed to 10-year-olds would be exempt, and the rule would fail to address the real scope of the danger. At the present time, Illinois has the strongest standard. As noted previously, we also want to reinforce that, contrary to the CPSC's note in its ANPR, Illinois' new Lead Poisoning Prevention Act of 2006 does not limit the definition of "children's products" to age six and younger. That is a misunderstanding of the law. When proposed, supporters of the Illinois law deliberately omitted an age for the reasons set forth above.

Voluntary standards have not worked and cannot be depended upon. A voluntary standard is likely to be limited to too small a portion of currently dangerous products. The settlement agreed to by jewelry manufacturers and retailers in California in 2006 that was later codified in California law only holds children's jewelry for children under age 6 to the .06% lead by weight standard. The settlement may reflect what the industry considers a reasonable voluntary standard, but in fact it leaves children at risk.

In almost a decade, the CPSC has issued 29 recalls involving 157,962,000 pieces of toy jewelry due to high lead levels. Since 2005, over 15 million units of children's jewelry have been recalled by CPSC in 19 separate recalls. Clearly, the current ability of the

industry to set its own lead content standards is ineffective in stemming the production or sale of children's jewelry containing potentially deadly levels of lead.

Additionally, the voluntary recall procedure is ineffective. Once recalls are announced, industry makes little effort to follow up and see that products are off the shelves, or to notify retailers. Clearly, the history of voluntary recalls demonstrates that industry is averse to policing itself. This history underscores the undeniable weakness of the voluntary standard alternative. The jewelry industry's handling of current recall procedures demonstrates that consumers will not be protected if we let industry decide the standards for what is and is not dangerous.

We know how to protect children from lead hazards. The CPSC should take the lead in making this happen. CPSC should adopt a mandatory rule banning children's jewelry containing more than 0.06% lead by weight as a hazardous substance under the Federal Hazardous Substances Act. This ban should apply to all children's jewelry, and not merely to jewelry made for a particular age category. A mandatory standard is essential if we are to remove these dangerous products from the marketplace and safeguard our children's health.

Thank you for the opportunity to comment, and for your full and deliberate consideration of this matter.

Sincerely,

Anita Weinberg
Chair, Illinois Lead Safe Housing Task Force

Stevenson, Todd A.

From: Kathryn Mackey [kmackey@luc.edu]
Sent: Monday, March 12, 2007 5:41 PM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR

Attachments: Illinois Lead Safe Housing Task Force ANPR Comments.doc

Illinois Lead
afe Housing Tas.

City of Chicago
Richard M. Daley, Mayor

Department of Public Health

Terry Mason, M.D., F.A.C.S.
Commissioner

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Chicago, Illinois 60604
(312) 747-9884
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http://www.cityofchicago.org/health

March 9, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

RE: Children's Jewelry Containing Lead ANPR

To Whom It May Concern:

The City of Chicago would like to take this opportunity to thank the Consumer Product Safety Commission for allowing us to provide feedback on the above referenced Advanced Notice of Proposed Rulemaking regarding lead in children's jewelry. As previously summarized in our letter dated August 16th, 2006 in regards to petition HP 06-1, Chicago has found dangerously high levels of lead in half of the children's toy jewelry we tested, and have had cases of lead poisoned children where we suspect toy jewelry to be the main cause. The City of Chicago continues to encourage the Commission to classify metallic children's jewelry containing lead as a banned hazardous substance. We also further implore the CPSC to discontinue using a blood lead level of 10 as a threshold for action and to require testing which assumes worst case exposures when regulating children's products.

We believe our letter of August 16th, 2006 provides documentation as to many of the dangers posed by leaded children's jewelry and provides relevant responses to the requested information in part G of the Federal Register ANPR. Rather than repeat these points, we have attached a copy of the August 16th 2006 letter to this comment and incorporate it by reference. However, we would also like to bring to the Commission's attention to several incorrect statements in your ANPR and inform you of additional recent developments.

Section B of ANPR states, "The scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood (μg/dL) as a level of concern with respect to lead poisoning in children." It would appear from the context in which this is quoted, and from discussions with CPSC staff, that the commission fails to grasp what is meant by the language of "level of concern." This level has never been intended to be used as a marker for ill effects of lead exposure on an individual level. It is not based upon epidemiologic or toxicological studies of lead exposure and does not represent a level at that would be "safe" using any recognized risk assessment protocol. This is widely recognized by other federal agencies, including the Centers for

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Disease Control and Prevention, which noted in its August 2005 document, *Preventing Lead Poisoning in Young Children*, "...this level [10 µg/dL], which was originally intended to trigger communitywide prevention activities, has been misinterpreted frequently as a definitive toxicologic threshold."

In reality, the weight of the scientific evidence suggests that there are substantial deleterious effects of lead levels substantially lower than 10µg/dL[1]. Based on both the ANPR and CPSC's decision into whether or not lead in vinyl lunchboxes was hazardous, CPSC seeks only to prevent children from reaching a blood lead level of 10 µg/dL despite the well documented harm at lower levels. The City of Chicago believes that CPSC's goal should be the complete prevention of any exposure to lead by children, and its rulemaking should reflect the latest scientific understanding of lead.

In section E of the ANPR, CPSC summarizes recent legislation in the State of Illinois that regulates lead content in children's jewelry. As one of the many organizations supporting this groundbreaking legislation, we would like to call your attention to two errors in the summary you provide. CPSC states that the act covers children aged six and younger. This is not true. The portions of the act related to consumer products merely make reference to "children." They do not specify an age limit, nor is the term "children" defined within the act. In fact, the regulations promulgated by the Illinois Department of Public Health under the act explicitly define "child" as a person under 16 years of age[2]. Chicago believes that it is essential to define "children" to include persons older than six when discussing lead containing jewelry, as it is extremely difficult to predict the age range that will have access to and utilize inexpensive jewelry. Additionally, the CPSC misquotes the Illinois statute, saying that it bans lead use in "...other articles used by or intended to be ***and*** chewable by children." The statute does not actually contain the emboldened "and" which could be interpreted to further restrict the scope of the products.

In addition to the Illinois and California statutes referenced in section E, CPSC should also be aware that on December 13, 2006, the City of Chicago passed changes to its "lead bearing substances" ordinance[3] allowing for the regulation of lead in consumer products. The revised ordinance includes, "substances and surfaces that are edible or chewable by or accessible to children, including toys, furniture or decorative objects" which exceed standards, set by regulation, for lead content in the definition of lead hazards and prohibits them from sale. Additionally, the ordinance provides procedures for the City to conduct inspections of retail

---

[1] See, for example:

Canfield, Richard L., Christopher R. Henderson, Deborah Cory-Slechta, Christopher Cox, Todd A. Jusko, and Bruce P. Lanphear. 2003. Intellectual Impairment in Children with Blood Lead Levels below 10 µg/dL. New England Journal of Medicine 348:1517-22.

Lanphear BP, Hornung R, Khoury J, Yolton K, Baghurst P, Bellinger DC, Canfield RL, Dietrich KN, Bornschein R, Greene T, Rothenberg SJ, Needleman HL, Schnaas L, Wasserman G, Graziano J, Roberts R. Low-level environmental lead exposure and children's intellectual function: an international pooled analysis. Environ Health Perspect. 2005 Jul;113(7):894-9.

[2] Section 845.10, Illinois Administrative Code, available at http://www.ilga.gov/commission/jcar/admincode/077/077008450000100R.html

[3] Chapter 7-4, Chicago Municipal Code. Available at: http://egov.cityofchicago.org/webportal/COCWebPortal/COC_ATTACH/LeadOrdinance_revDec06.pdf

establishments and hold them accountable for selling dangerously leaded products. The City of Chicago implores CPSC to avoid drafting rules that would in any way preempt stricter state or local regulation of lead hazards.

The City of Chicago is also concerned about the testing methodologies that are ultimately recognized and utilized by the CPSC. We do not believe that there is adequate science to support the conclusion that lead can be rendered "inaccessible" to a child through electroplating or the application of other coatings. We are concerned that tests that attempt to measure "accessibility" do not reflect real-world conditions children's products are exposed to that could substantially weaken or remove protective coatings. Therefore, we strongly encourage the CPSC to base its rulemaking solely upon the total lead content of a product, as determine by acid digestion or XRF. Should the CPSC decide to continue to utilize accessibility standards, the testing methods must be revised to ensure that they expose the objects to grinding or other forms of distressing to better simulate the rough handling such products typically encounter at the hands of a young child.

Should you have any questions regarding this letter, please do not hesitate to contact Patrick MacRoy at 312-746-5007 or MacRoy_Patrick@cdph.org.

Sincerely,

Terry Mason MD

Terry Mason, M.D., F.A.C.S.
Commissioner
Chicago Department of Public Health

[CLICK HERE AND TYPE COMPANY NAME]

FACSIMILE TRANSMITTAL SHEET

TO: Office of the Secretary, Consumer Product Safety Commission,	FROM: Commissioner, Chicago Dept of Public Health,
COMPANY:	DATE: 3/12/2007
FAX NUMBER: (301) 504-0127.	TOTAL NO. OF PAGES INCLUDING COVER: 4
PHONE NUMBER: 312 747-9547	SENDER'S REFERENCE NUMBER:
RE: "Children's Jewelry Containing Lead ANPR."	YOUR REFERENCE NUMBER:

X URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

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March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
cpsc-os@cpsc.gov
Fax: 301-504-0127

Re: Children's Jewelry Containing Lead ANPR – Follow-up Comments

Sierra Club submitted comments to CPSC on February 9, 2007 regard the CPSC's Advanced Notice of Proposed Rulemaking. Upon additional discussion and consideration, the Sierra Club amends its comments to encourage CPSC to adopt standards that are consistent with the California Health & Safety Code §25214.1 *et seq.* for toy jewelry. The CPSC rule should follow the scope of the California law to include all jewelry not just metal toy jewelry and the rule should address components of the jewelry.

Sierra Club believes that the California standards are a major step forward to protecting children from lead poisoning. While Sierra Club does not believe they are sufficiently stringent to protect children, the California standards are based on the Global Consent Judgment entered into by the California Attorney General, the Center for Environmental Health and more than 70 major retailers and vendors of costume jewelry.

Sierra Club thinks it is reasonable and appropriate to defer to the result of the stakeholders' consensus judgment and later assess how the standards have worked. It encourages CPSC to do likewise. In five years, CPSC should revisit the effectiveness of the standard. Based on Sierra Club's assessment at that time, Sierra Club may submit a petition for refinements to the proposal.

Sierra Club believes it is essential that CPSC's rulemaking not preempt the California standards. There has been too much progress implementing those standards to risk disruption of efforts that are underway. It is also important to retain the ability for California residents to use the power of Proposition 65 to enforce the outcome.

Thank you again for your work and the opportunity to present these comments.

Sincerely,

Ed Hopkins

Ed Hopkins
Director, Environmental Quality Program

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Stevenson, Todd A.

From: Tom Neltner [neltner@ikecoalition.org]
Sent: Monday, March 12, 2007 2:05 PM
To: 13015040127@fax.send2fax.com; Stevenson, Todd A.
Cc: neltner@ikecoalition.org; jessfrohman@gmail.com; Alexa Engelman
Subject: Additional Sierra Club Comments on Jewelry Rulemaking
Attachments: CPSC comments - 3-12-07.pdf

Please see attached comments

Tom Neltner

CITY OF BALTIMORE

SHEILA DIXON, Mayor

HEALTH DEPARTMENT

Dr. Joshua M. Sharfstein, Commissioner
210 Guilford Avenue
Baltimore, MD 21202

March 12, 2007

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814
Via: cpsc-os@cpsc.gov

Re: Children's Jewelry Containing Lead ANPR

Introduction

Lead poisoning is completely preventable. Yet, it remains a serious public health concern. Therefore, the Baltimore City Health Department strongly supports a federal ban on children's metal jewelry containing more than 0.06% lead by weight in metal components. We believe that the Consumer Product Safety Commission (CPSC) must enact and enforce a ban on such products to protect children from lead poisoning.

Baltimore City's Children's Jewelry Regulation

During the summer of 2006, the Baltimore City Health Department sampled seventeen pieces of children's jewelry collected from various stores. Four of those seventeen samples were found to be in excess of 600 parts per million of lead; the results of these four samples ranged from 622 parts per million to 68,071 parts per million of lead. In response to this finding, the Health Department proposed a local ban on children's lead jewelry containing metal components with excess levels of lead.

On December 7, 2006, the regulatory action was signed and promulgated. The regulation can be found at http://www.baltimorehealth.org/press/2006_12_07_lead_regs.pdf. The regulation states that as of December 7, 2006, children's jewelry containing more than 1200 parts per million cannot be offered for retail sale. Starting September 1, 2007, children's jewelry with metal components containing in excess of 600 parts per million of total lead will be banned.

To ensure that distributors within the City are in compliance, the regulation requires the Health Department to test random samples of children's jewelry monthly; the monthly testing began February 2007. The Health Department uses a laboratory accredited by National Lead Accreditation Program that charges a fee of twenty dollars per sample.

The Department's February testing resulted in finding four out of twenty items collected to contain lead in excess of 1200 parts per million. A description of the products and the results of

the testing can be found at http://www.baltimorehealth.org/press/January_Results_Lead_testing.pdf. The three stores that sold these products were each issued a notice. The notice orders stores to pull all items of the same style and from the same manufacturer off their shelves within twenty-four hours of receipt.

Conclusion

A national ban is an important step in protecting children from lead hazards. It will lead companies to fix their production processes, which is the best method for keeping unsafe lead-tainted children's jewelry off of the market. It will also set a fair and uniform standard for the country.

Sincerely,

Joshua M. Sharfstein, M.D.
Baltimore City Health Commissioner

Olivia D. Farrow, Esq., R.S.
Assistant Commissioner
Division of Environmental Health

Stevenson, Todd A.

From: Farrow, Olivia [Olivia.Farrow@baltimorecity.gov]
Sent: Monday, March 12, 2007 3:09 PM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR.
Attachments: BaltimoreCity-Children'sJewelryANPR.pdf

Please see attached comments.

Thank you,
Olivia D. Farrow, Esq., R.S.
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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
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MONTPELIER, VT
05609-1001

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814

By email (cpsc-os@cpsc.gov)
and facsimile ((301) 504-0127)

Re: Children's Jewelry Containing Lead ANPR

Dear Sir/Madame:

On behalf of the Attorneys General of the States of Vermont and New York ("the States"), we are writing to provide the following comments to the Consumer Product Safety Commission ("CPSC" or "the Commission") in connection with its pending rulemaking on toy jewelry containing lead.

The States have a strong interest in ensuring that children in our respective jurisdictions are not exposed to toxic substances such as lead. In pursuing that goal, we recognize the important role the CPSC plays in keeping hazardous products off the market. With specific reference to the Advance Notice of Proposed Rulemaking ("ANPR"), 72 Fed. Reg. 920 (Jan. 9, 2007), the Commission deserves credit for proposing to tighten its regulation of lead in children's metal jewelry. At the same time, we are concerned that the Commission's proposed course of action is not sufficiently protective of public health, given the known effects of lead exposure. We strongly urge the Commission to do more to protect the youngest and most vulnerable by (1) applying substantially stricter standards for lead content in children's jewelry; (2) covering a wider range of products; (3) preserving all states' ability to set even more protective limits; and (4) promulgating lead standards that are mandatory and binding.

1. The CPSC should lower its level of concern substantially below 0.06%.

In its ANPR, the CPSC has proposed a tolerance of 0.06% lead by weight for children's metal jewelry. This proposed standard is too high, for it does not take into account the very low levels of lead in blood that can cause adverse health effects in children, nor the multiple sources of exposure to lead that exist in our society.

The ANPR states that the scientific community "generally recognizes a level of 10 micrograms of lead per deciliter of blood (μg/dL) as a level of concern with respect to lead poisoning in children." However, this statement is, first of all, at odds with the Centers for Disease Control's conclusion that "there is no safe level of lead in blood"—a position with which the Environmental Protection Agency concurs.[1] Indeed, the EPA has commented that some health effects, "particularly changes in the levels of certain blood enzymes and in aspects of children's neurobehavioral development, may occur at blood-lead levels so low as to be essentially without a threshold."[2] As the CDC has explained, the 10 μg/dL standard "was originally intended to trigger communitywide prevention activities [and] has been misinterpreted frequently as a definitive toxicologic threshold."[3]

Of particular significance is the substantial evidence of neurobehavioral deficits in children associated with blood lead levels ("BLLs") far below 10 μg/dL; current medical research supports a level of concern closer to 1-2 μg/dL.[4] Indeed, 10 μg/dL may well be the next in a series of descending thresholds—starting with 60 μg/dL in the 1960s and then dropping to 40 and 20 μg/dL, before arriving at the present 10—to be adopted by governmental agencies and later discarded in light of better medical research. Since, according to the CPSC, the proposed 0.06% tolerance for lead in children's jewelry assumes a 10 μg/dL level of concern, and since a more appropriate level of concern is one-tenth to one-fifth of the 10, the proposed 0.06% standard should be reduced accordingly.

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[1] CDC, *Lead: Questions & Answers*, http://www.cdc.gov/lead/qanda.htm; EPA, *Measure S2: Lead-contaminated Soil Near California's Public Elementary Schools*, http://www.epa.gov/envirohealth/children/features/s2.htm ("Current research shows there is no safe level of lead in blood."); *see also* Agency for Toxic Substances and Disease Registry ("ATSDR"), *Draft Toxicological Profile for Lead* (Sept. 2005), http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf ("*Profile*"), 25 ("[N]o threshold for the effects of lead on IQ has been identified.") and 30 ("[The] data suggest that certain subtle neurobehavioral effects in children may occur at very low [BLLs].").

[2] EPA, *Lead; Renovation, Repair, and Painting Program; Proposed Rule*, 71 Fed. Reg. 1581 (Jan. 10, 2006), http://edocket.access.gpo.gov/2006/06-71.htm, 1590.

[3] CDC, *Preventing Lead Poisoning in Young Children* (Aug. 2005), http://www.cdc.gov/nceh/lead/publications/PrevLeadPoisoning.pdf, 2.

[4] *See, e.g.*, B.P. Lanphear, K. Dietrich, P. Auinger & C. Cox, Cognitive deficits associated with blood lead concentrations <10 micrograms/dL in US children and adolescents, 115 *Public Health Rep.*521-529 (2000); R.L. Canfield, C.R. Henderson, Jr., D.A. Cory-Slechta, C. Cox, T.A. Jusko & B.P. Lanphear, Intellectual impairment in children with blood lead concentrations below 10 micrograms per deciliter, 348 *New England J. Med.* 1517-1526 (2003); D.C. Bellinger & H.L. Needleman, Intellectual impairment and blood lead levels, 349 *New England J. Med.* 500-502 (2003). *See also Profile*, 23 (citing studies of health effects of low BLLs) and 97 ("In fact, the results of some recent studies suggest that there may be no threshold for the effects of lead on intellectual function.").

There is another reason to lower the 0.06% standard. That figure derived early support from the American Academy of Pediatrics,[5] which in 1972 relied on a BLL of concern then in effect of *40* μg/dL, four times the current level. Moreover, in the AAP's article, the 0.06% tolerance was based at least in part, if not in large measure, on economic, rather than health concerns. This is evidenced by a National Academy of Sciences report issued a year later,[6] which, in the absence of adequate data on ingestion and health effects, justified the 0.06% standard on the grounds simply that it was sufficient to prohibit any intentional addition of lead to paint.[7]

Even the CPSC itself has acknowledged the appropriateness of a threshold lower than 0.06% lead in paint—specifically, 0.01%, or 0.02%. In a "Regulatory Investigation," the agency considered whether the maximum allowable limit for lead in paint used as or on consumer products should be reduced from 0.06% to 0.01%.[8] It concluded, "When the 10 μg/dl [sic] blood level of concern, along with other recent data, such as the absorption of ingested lead in young children, is applied in a process similar to that used to develop the 0.06% limit, the resulting maximum allowable limit for lead in paint is estimated as *0.01%*.(CPSC 1990) [emphasis added]."[9]

In a follow-up "Termination of Regulatory Investigation; Lead in Paint,"[10] the CPSC arrived at a standard of 0.02%, based on a recalculation of the weight of paint on the market, as well as more recent information on the health effects of lead. Again, however, the agency decided not to lower the 0.06% standard for economic reasons, namely, the fact that most paint was already below the 0.02% level, and the cost of lowering the standard would outweigh its benefits. In the case of toy jewelry—or indeed, most non-essential children's products—there is a serious question as to whether economic factors should be permitted to offset the potential for physical harm to children posed by exposure to lead, particularly where there is a consensus, as noted above, that there exists no safe level of lead in the body.

An even lower standard, of 0.005% to 0.009%, had been recommended several years before in an internal CPSC memorandum.[11] The basis for that proposed level of concern appears to have been a recomputation of the maximum recommended intake of lead, from 200 μg/day to between 15 and 30.1 μg/day, which was in turn a function of revising the permitted BLL from 40 μg/dL to 10 μg/dL.

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[5] *See* Committee on Environmental Hazards: Lead Content of Paint Applied to Surfaces Accessible to Young Children, 49 *Pediatrics* 918-21 (1972).

[6] National Academy of Sciences, *Report of the Ad Hoc Committee to Evaluate the Hazard of Lead in Paint* (1973) (typewritten manuscript available from the NAS).

[7] *Id.*, 32.

[8] 57 Fed. Reg. 18418-01 (Apr. 30, 1992).

[9] The "CPSC 1990" reference is to the Brian Lee memorandum, mentioned in the text below.

[10] 58 Fed. Reg. 63311-01 (Dec. 1, 1993).

[11] Memorandum from Toxicologist Brian C. Lee, Ph.D., to Sandra C. Eberle entitled, Revision of the CPSC 0.06% lead in paint standard (16 CFR Title II Part 1303) (June 22, 1990).

In carrying over the 0.06% standard for paint to the proposed regulation on lead in toy jewelry, the CPSC has continued to rely on a BLL of concern of 10 μg/dL, as reflected in the Commission's Briefing Package.[12] According to the CPSC staff, "children should not ingest more than 175 μg of accessible lead in a short period of time to avoid exceeding the 10 μg/dL level of concern"; the staff further determined that "there was a lower likelihood of ingesting [such] potentially hazardous levels of accessible lead if a children's metal jewelry item had a total lead content of 0.06% or less."[13] For the reasons noted above,[14] the more appropriate approach would be to apply a significantly lower level of concern.[15]

We also note that children and others wearing high-lead content jewelry can be exposed to lead via a variety of exposure scenarios. Lead can be transferred from high-lead content jewelry to skin under normal wear through direct dermal contact. Children can be further exposed by mouthing behavior, and by subsequent indirect exposure from hand-to-mouth activity. When such jewelry is worn as body piercings (earrings, eyebrow rings, navel rings and the like), especially when skin is abraded or raw, the likelihood of direct exposure of the lead-contaminated jewelry to the bloodstream is of special concern. Thus, a standard predicated solely upon ingestion would be inadequate.

Moreover, none of these proposed standards—even the lowest of them—takes into account the *multiple sources* of exposure to lead that pervade our society, including lead-based paint, lead in soil, lead in water from leaded fixtures, take-home occupational exposure, and a host of consumer products.[16] Consideration of these multiple sources is required by the fact that lead accumulates in the human body, and it is the cumulative load of lead in a child that will determine the level of harm to him or her.[17]

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[12] *See* Memorandum from Joanna M. Matheson to Kristina M. Hatlelid (Nov. 28, 2006), 40-49 (Tab C) to CPSC, *Petition for Ban on Lead Toy Jewelry, Petition HP 06-1* (Dec. 4, 2006) ("Matheson").

[13] Matheson, 45.

[14] *See* text accompanying notes 1-11.

[15] Although the Commission staff noted that recent medical studies had identified harmful effects of BLLs below 10 μg/dL and referenced no fewer than 9 such studies reporting adverse effects on cognitive function and IQ alone, it concluded that the level of concern should not be lowered, citing uncertainties in the research. Matheson, 41.

[16] *See Report of the Committee on Lead in Consumer Products and Other Exposures*, on the Vermont Attorney General's Website, http://www.atg.state.vt.us/upload/1170959947_Lead_Consumer_Products.pdf, *passim*. These products include jewelry, toys and other children's products, lunch boxes, food and food vessels, imported cosmetics and folk remedies, PVC plastic, art supplies, garden hoses, toothpaste, wheel weights, ammunition and sinkers, salvage building materials, car batteries, non-residential paints and primers, hair and skin care products, and tattoo inks and dyes.

[17] *Profile*, 278 (describing lead's "persistence, bioaccumulative nature, and toxicity").

Thus, calculating a level of concern with reference to *any one* source of exposure is inappropriate. Instead, one must allow for the possibility—or, given the prevalence of lead-based paint in many communities, the probability—that children will ingest or otherwise be exposed to lead from more than one medium.[18] While the States are not aware of any authority that quantifies this multiple-exposure effect, the reality of multiple exposures should not be ignored in setting a tolerance for lead in any one product. The alternative to this approach is a balkanized regulatory scheme in which each individual source has (or does not have) its own tolerance for lead, calculated on the basis of some "acceptable" BLL (whether 10 μg/dL or lower); and children end up being the repository of up to the same permitted amount of lead over and over again. From the standpoint of protecting young children from harm, such an outcome is intolerable.

Accordingly, the States propose that the CPSC limit the amount of lead in a children's product to "trace amounts," as reflected in bills sponsored in the 109th Congress by Representative Waxman and Senator Obama,[19] and that the agency further define the term "trace amount" to mean .001% (10 parts per million) by weight. This is roughly one-tenth of the upper end of the range (.005% to .009%) recommended to the CPSC by Dr. Lee, which, as noted above, was based on 10 μg/dL BLL of concern, rather than on the BLL of 1-2 μg/dL warranted by current medical research, and which did not take multiple exposure sources into account.

2. The CPSC should set strict standards for lead in all children's products.

The same concern over multiple sources of exposure to lead described above requires consideration of a broader approach to regulating lead in articles with which young children are likely to come into contact. To limit lead in toy jewelry but not in any of the myriad of other children's products on the market[20] is to condemn children to the role of canaries in many mines, where recalls may occur after a particular item is found to have poisoned children[21] and regulation is considered only as a last resort.

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[18] *Id.*, 19 ("Leaded paint is still prevalent in many older homes in the United States.")

[19] *See* H.R. 668, sponsored by Rep. Henry Waxman, and S. 2048, sponsored by Sen. Barak Obama in the 109th Congress. Both measures would direct the CPSC to ban any consumer product marketed for use by children under the age of six, or whose substantial use by such children is foreseeable, that contains more than "trace amounts" of lead as determined by the CPSC.

[20] *See* n. 16 for examples of these products.

[21] On February 22, 2006, a four-year-old Minneapolis child died of lead poisoning after swallowing a metal charm composed of 99% lead. The charm was attached to a bracelet sold with Reebok children's shoes. The following month, the CPSC recalled 300,000 of the charms, as well as another 580,000 "Dollar Tree" jewelry items containing high levels of lead.

A more rational approach is to set the above-described and highly protective limits on the amount of lead in *all* children's products, as proposed in the bills sponsored by Representative Waxman and Senator Obama cited above.[22] That would ensure that total exposure is taken into account and that children are protected from the hazards of lead poisoning from all children's products.

We urge the Commission to move forward with a rule that will establish sufficiently protective lead levels for all children's products.

3. The CPSC should clarify that states have the authority to set more protective standards for lead in children's products.

Given states' responsibility to protect the public health of their citizens, it is critical to ensure that state efforts to reduce further the amount of lead in children's products are permitted to move forward. This can be accomplished through an express commitment by the CPSC to grant exemptions under the Consumer Product Safety Act for state limits on lead in children's products that are at least as protective as the federal limits.[23] We also note that states retain the ability, under any circumstances, to use their inherent police powers to protect their citizens from public health hazards.[24]

This strict approach to regulating a known and serious toxin is particularly justified given the high human and economic costs associated with lead poisoning.[25] In contrast, it is difficult to ascribe any societal benefit at all to the continued availability of children's products containing more than trace levels of lead.

4. The CPSC should promulgate a mandatory rule.

Given the importance of protecting children from lead poisoning, the CPSC should issue a mandatory rule on lead in children's jewelry, not simply guidance. Labeling is unlikely to be effective, particularly for children (and adults) who purchase such jewelry but do not appreciate the dangers of lead that notification of lead content might, but probably would not, disclose. Moreover, labeling would not effectively educate consumers about the various pathways of exposure posed by jewelry, will become ineffective as the time after

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[22] *See* n. 19.

[23] *See* 15 U.S.C. § 2075(c).

[24] *See Leipart v. Guardian Industries, Inc.*, 234 F.3d 1063 (9th Cir. 2000) (under savings clause of Consumer Product Safety Act, 15 U.S.C. § 2074(a), federal safety standards promulgated by CPSC do not preempt state common-law requirements).

[25] In the State of Vermont, with only 600,000 people, a conservative estimate of the loss in lifetime earnings alone for children who were tested in just one year and found to have blood lead levels of 5 μg/dL or above is over $80 million, and perhaps closer to $119 million. *Get the Lead Out of Vermont, Overview and Summary of Recommendations* (Jan. 2006), 10, http://www.atg.state.vt.us/upload/1170346964_Lead_Combined_123.pdf.

purchase passes, and likely would not be effective when jewelry is given as gifts. As discussed above, we also believe that the CPSC should establish comprehensive standards addressing lead in all children's products as well, but that effort should not delay immediate promulgation of a standard for children's jewelry.

Conclusion

In light of all of the above, the States urge the CPSC to adopt a "trace amount" (.001% by weight) standard for lead in children's jewelry, to apply that standard to children's products generally, to clarify the states' authority to set even more stringent standards for lead in children's products, and to promulgate its standards in the form of a mandatory rule.

Sincerely,

Elliot Burg
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Vermont Attorney General's Office
109 State Street
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Tel. (802) 828-2153

Simon Wynn
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Greenberg Traurig

Francis A. Citera
(312) 456-8413
citeraf@gtlaw.com

March 12, 2007

VIA ELECTRONIC MAIL
ORIGINAL TO FOLLOW

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Room 502
Bethesda, Maryland 20814

Re: Children's Jewelry Containing Lead
Advance Notice of Proposed Rulemaking

Sir or Madam:

On behalf of Claire's Boutiques, Inc. ("Claire's"), we thank you for the opportunity to submit comments on the Consumer Product Safety Commission's ("the Commission") Advance Notice of Proposed Rulemaking. As a specialty retailer of products developed for children and teens, the safety of our products and the health and well-being of our customers are of paramount concern to us. We believe that retailers should take steps to ensure that products with unacceptable levels of lead are not sold to children. As a result, the purchasing department at Claire's responsible for children's jewelry and accessories has had procedures in place since as early as 1999 to address levels of lead in children's jewelry sold in Claire's stores. We believe that these procedures have placed Claire's at the forefront of jewelry retailers in protecting children from the potential harmful effects of lead. Nevertheless, we urge the Commission to implement a national standard. To do otherwise, would result in a patchwork quilt of regulations in the United States, and will not uniformly safeguard the children the Commission's proposed rule is designed to protect.

Like the Commission, Claire's has reviewed existing standards relevant to lead in children's metal jewelry. We believe that the California legislation, which was enacted this past September, offers a comprehensive approach to protecting

children from the potential harmful effects of lead, without placing an undue burden on jewelry retailers, like Claire's.

While the Commission is familiar with the California legislation, we would like to highlight for you some important aspects of the California legislation that Claire's believes the Commission should adopt, regardless of whether it adopts the California legislation in whole or in part.

First, we urge the Commission to define children's jewelry in an objective manner similar to the definition contained in the California legislation. To this end, children's jewelry is defined in the legislation as jewelry that is made for, marketed for use by, or marketed to, children. The term "children" is defined as children aged six and younger.

Second, the California legislation provides that on and after September 1, 2007 children's jewelry shall be made entirely from metallic materials that are either class 1 material (stainless or surgical steel, karat gold, sterling silver or "platinum group metals") or contain less than .06 percent (600 parts per million) lead by weight. The State of California recognized that a different standard for glass and crystal decorative components was warranted because of the decreased risk of exposure to lead from these elements in jewelry. As a result, glass or crystal decorative components (e.g. cat's eye, cubic zirconia, glass, rhinestones, cloisonné), all of which contain potentially high, but non-soluble, amounts of total lead, are permitted provided these components weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.

The Commission's focus on metal components is, in our view, well advised. We believe that a different standard for glass and crystal decorative components is necessary and that the Commission, like the state of California, should decline to classify a product as containing excess levels of lead simply because of the lead content of the crystal and glass in jewelry.

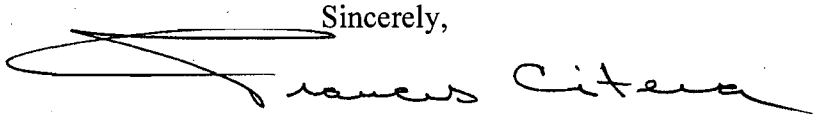
Finally, we believe it important that the Commission include a detailed protocol or methodology. The California legislation specifies testing methods and protocols for determining compliance with the legislation. The California legislature concluded that the testing methods for determining compliance with the legislation would be conducted using the EPA reference methods 3050B or 3051 for the material being tested and in accordance with detailed procedures described in the legislation.

As you know, the California legislation provides, in part, for phased in compliance. Claire's, like many others in the industry, has already undertaken a

variety of steps to comply with this legislation. A new or different national standard will undermine these efforts at great expense to jewelry manufacturers, jewelry retailers and jewelry distributors, and result in unnecessary confusion in the market.

Claire's welcomes rulemaking that promotes the health and safety of children. Like the Commission, Claire's believes that protecting children from the potential harmful effects of lead is an important goal. As a result, we welcome the opportunity to discuss with you further the Proposed Rulemaking.

Sincerely,



Francis A. Citera

Enclosure
FAC/rm

cc: Rebecca R. Orand
Stephen E. Sernett

CHI 56661665v2 3/12/2007

Improving Kids' Environment

1201 N. Central Avenue #9
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www.ikecoalition.org
Fax: 866-234-8505
317-902-3610
mccabe@ikecoalition.org

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
Cpsc-os@cpsc.gov

Re: Children's Jewelry Containing Lead ANPR

Dear Secretary:

On behalf of Improving Kids' Environment (IKE), I am writing to support the Consumer Product Safety Commission's announcement that it intends to develop a rule to restrict the amount of lead in children's jewelry and to urge the agency to move forward as expeditiously as possible with a rule that will provide the greatest protection to children. IKE is a nonprofit organization based in Central Indiana that seeks to reduce environmental threats to children's health. It has focused a great deal of attention on lead poisoning, which is one of the most significant threats to children's health in Indiana.[1]

This rule is needed at this time. We know from a number of studies that children's jewelry often contains lead, often in very high concentrations.[2] We know that children put toys, including toy jewelry in their mouths, or suck on them, or their younger siblings do. And we know, to our sorrow, that ingestion of lead-containing items such as toy jewelry can lead to serious and permanent damage or even death.

The most pernicious aspects of this issue is the unpredictability, almost randomness, of whether an item will have a high lead concentration and how impossible it is for adults to know whether products are safe or not. And because a large percentage of these products are manufactured outside the United States, the only way to address a situation like this is for the federal government to establish clear requirements for the lead content of the products, a system whereby manufacturers and distributors must take responsibility for assuring that products they make or handle meet the requirements, and a strong enforcement program.

[1] The U.S. Centers for Disease Control and Prevention estimate that 13,400 children in Indiana are likely to be lead poisoned. Indiana Lead Elimination Plan (July 2004) at 2. www.in.gov/isdh/programs/lead/pdf/FinalChildhoodLeadPoisonElimPlan.pdf.

[2] In January and February of 2007 alone, the CPSC issued recalls for 5 different children's jewelry products because of dangerous lead content.

IKE offers the following specific comments for CPSC's consideration as it moves forward with the rulemaking:

1. **0.06% lead by weight is a good starting point for the limit on lead content.** While there is good reason to recommend a level lower than 0.06% lead by weight as the limitation,[3] this limit has been adopted by California, Illinois and Canada, and will provide considerable protection. Due to activity in California, it has also been adopted by a broad coalition of the affected industry.

2. **CPSC should use the California law as a model.** There are many reasons in public policy and regulation why it makes sense not to reinvent the wheel. In this case, it makes a great deal of sense for the federal program to be as consistent as possible with the California program, which has been developed in conjunction with representatives of industry and has a limited, but so far successful, track record of implementation.

3. **IKE agrees with comments of the Sierra Club** with respect to preemption of state and local laws, how to test products for lead, the application of the rule to non-metal jewelry, and the need for CPSC to require manufacturers and importers to institute quality control procedures.

IKE looks forward to providing further comment as this rulemaking proceeds.

Very truly yours,

JGM

Janet G. McCabe
Executive Director

cc: IKE Board
IKE Advisory Board

[3] Studies are increasingly showing adverse effects on children of very low levels of blood lead (≤10 µg/dL), which has been acknowledged by both CDC and the United States Environmental Protection Agency (see Comments on this ANPR of the Sierra Club, at 2). For this reason, IKE objects to the statements in the ANPR that "the scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood (10 µg/dL) as a level of concern with respect to lead poisoning in children. 72 Fed. Reg. 920 (January 9, 2007).

Stevenson, Todd A.

From: Janet McCabe [mccabe@ikecoalition.org]

Sent: Monday, March 12, 2007 2:15 PM

To: Stevenson, Todd A.; Stevenson, Todd A.

Cc: 'Bill Beranek'; 'Indra Frank'; 'Jack Leonard'; 'John Ellis'; 'Marc Lame'; 'Rae Schnapp'; 'Richard Van Frank'; 'Senator Beverly Gard'; 'Stephen Jay'; 'TaNaisha Lee'; 'Cindy Collier'; 'Dana Reed Wise'; 'Dave McCormick (Dave McCormick)'; 'Dave Wagner (Dave Wagner)'; 'Debra Simmons Wilson'; 'jodi perras'; 'Maria Larson'; 'Paula Smith'; 'Sarge Visher'; 'Tom Neltner (Thomas Neltner - IKE)'

Subject: Comment on CPSC ANPR on Toy Jewelry

Attachments: Toy_Jewelry_CPSCANPR_Comment_3-12-07.doc

Dear Sir or Madam--

Attached is a comment from Improving Kids' Environment on CPSC's ANPR on toy jewelry. Thank you for your attention.....

Janet McCabe
Executive Director
Improving Kids' Environment
317-902-3610

Center for
Environmental Health

528 61st Street, Suite A
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CEH

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 433 East West Highway
Bethesda, MD 20814
cpsc-os@cpsc.gov
Fax: (301) 504-0127

Re: Children's Jewelry Containing Lead ANPR

The Center for Environmental Health ("CEH") is pleased that the Consumer Product Safety Commission has issued an Advanced Notice of Proposed Rulemaking to consider a federal regulatory ban of lead in toy jewelry.

For ten years, CEH has worked at the intersection of health and the environment, reducing pollution and promoting alternatives to toxic chemicals. CEH works with individuals and organizations across the country to help mobilize communities against exposures to hazardous chemicals, and to create markets for healthier products and practices. Through our work on lead in consumer products, we have forced industry reformulation of children's medicines, baby powders, vinyl lunchboxes, imported candies and jewelry. Since 2003, CEH has researched and tested hundreds of jewelry products for lead and initiated litigation against the manufacturers, distributors and retailers of dangerous lead-containing jewelry. CEH is committed to ensuring effective federal regulation for lead in jewelry and submits these comments to assist CPSC in its rulemaking process.

CEH strongly urges the CPSC to adopt the California lead-in-jewelry standard (the "California Lead Standard")[1] as a mandatory federal regulation for the following reasons.

1. The California Lead Standard is Comprehensive.

The California Lead Standard goes beyond metal jewelry and regulates jewelry on a component basis. If CPSC adopts the California Lead Standard, there will be no need for CPSC to go back and regulate the other known, prevalent, lead-containing components of jewelry, such as polyvinyl chloride or imitation pearl coatings containing lead carbonate. In addition, CEH has conducted extensive testing of non-metal components of jewelry and found high levels of lead in such plastic and other non-metal components. In response to CPSC's request for information regarding the lead content of non-metal jewelry components, CEH has included at

[1] California Health & Safety Code §25214.1 (A.B. 1681). A copy of the California Lead Standard is attached.

the end of this letter a chart summarizing a sample of the test results CEH has obtained in its testing of non-metal jewelry components. Crystal and rhinestones in costume jewelry also often contain more than 25 percent lead.

The California Lead Standard also regulates *all* jewelry, not just children's jewelry. Children often play with their parents' jewelry. Pregnant women and other high risk individuals are exposed to lead in jewelry on a daily basis, and ingestion of lead can affect the health of the child as it passes through the placenta to the developing fetus. Enacting the California Lead Standard nationally will obviate the need for CPSC to revisit its regulations to address these known dangers in the future.

2. The California Lead Standard Represents a Consensus of Industry and Public Health Advocates.

The California Lead Standard was prompted by lawsuits brought by consumer health advocates and the California Attorney General against more than seventy jewelry industry manufacturers, vendors, and retailers. In resolving those lawsuits, a broad coalition of jewelry industry representatives negotiated with consumer health advocates and the California Attorney General to reach a standard for lead content in all components of jewelry that was *both* feasible *and* protective of the public health. The parties carefully considered the public health, public policy, technical, scientific and economic aspects of various proposed standards. The resulting lead content standards were ultimately declared by the California courts to be in the public interest, and the California legislature later adopted the standards to apply them to all jewelry sold in California.

3. The California Lead Standard Has Momentum.

Because of California's leadership, the jewelry industry began undertaking the costs of complying with the California Lead Standard more than a year ago. Each party to the California litigation was required to notify each of their jewelry suppliers of the California Lead Standard requirements by June 30, 2006. As a result, manufacturers are already implementing these standards. Moreover, because many of the vendors and retailers operating in California are national in scope, the California Lead Standard is already being implemented by vendors and retailers on a nationwide basis. Additionally, Illinois has recently introduced a bill to adopt the California Lead Standard. Putting a federal regulation in place to make the California Lead Standard a national standard is the most effective way to add force to this movement and get dangerous leaded jewelry off the shelves. Conversely, adopting a standard different from the California Lead Standard will cause market confusion and waste the significant expense already undertaken by the jewelry industry to comply.

4. The California Lead Standard is Protective of the Public Health.

The California Lead Standard protects the public health by restricting metal components in children's jewelry to 600 parts per million ("ppm") of lead, and to 200 ppm of lead for most non-metal components. The California Lead Standard also sets lead content standards for both

metal and non-metal components of adult jewelry, and requires high-quality electroplating of metal components of adult jewelry that exceed 600 ppm of lead.

CEH is grateful for the opportunity to present these comments, and for the above reasons, urges the CPSC to adopt the California Lead Standard.

Yours very truly,

Michael Green
Executive Director
Center for Environmental Health

Representative Sample of 2006 Test Results
Lead Content in Non-Metal Jewelry Components

Item number	Lead-tainted Component	Type of Lab test	Lab Test Results (ppm Pb)
1	Cord	Total Digest Plastic	8,990
2	Cord	Total Digest Plastic	6,270
3	Cord	Total Digest Plastic	9,990
4	Cord	Total Digest Plastic	6,130
5	Cord	Total Digest Plastic	13,700
6	Pearl	Total Digest Coating	45,300
7	Pearl	Total Digest Coating	38,500
8	Pearl	Total Digest Coating	55,800
9	Cord	Total Digest Plastic	11,400
10	Pearl	Total Digest Coating	15,800
11	Pearl	Total Digest Coating	22,100
12	Pearl	Total Digest Coating	22,200
13	Pearl	Total Digest Coating	54,300
14	Pearl	Total Digest Coating	88,100
15	Pearl	Total Digest Coating	127,000
16	Pearl	Total Digest Coating	37,400
17	Pearl	Total Digest Coating	16,000
18	Pearl	Total Digest Coating	45,600
19	Pearl	Total Digest Coating	54,200
20	Pearl	Total Digest Coating	17,700
21	Pearl	Total Digest Coating	10,200
22	Pearl	Total Digest Coating	31,700
23	Pearl	Total Digest Coating	17,500
24	Pearl	Total Digest Coating	42,000
25	Pearl	Total Digest Coating	70,000
26	Pearl	Total Digest Coating	220,000
27	Pearl	Total Digest Coating	190,000
28	Pearl	Total Digest Coating	36,100
29	Pearl	Total Digest Coating	69,800
30	Pearl	Total Digest Coating	17,600
31	Pearl	Total Digest Coating	27,000
32	Pearl	Total Digest Coating	79,000
33	Pearl	Total Digest Coating	310,000
34	Pearl	Total Digest Coating	17,000

Item number	Lead-tainted Component	Type of Lab test	Lab Test Results (ppm Pb)
35	Cord/Pearl	Total Digest Coating	96,000
36	Pearl	Total Digest Coating	290,000
37	Pearl	Total Digest Coating	26,000
38	Pearl	Total Digest Coating	92,000
39	Pearl	Total Digest Coating	111,000
40	Pearl	Total Digest Coating	13,000
41	Pearl	Total Digest Coating	51,300
42	Pearl	Total Digest Coating	78,000
43	Pearl	Total Digest Coating	2,200
44	Pearl	Total Digest Coating	76,000
45	Pearl	Total Digest Coating	31,000

Effective: January 01, 2007

West's Annotated California Codes Currentness
Health and Safety Code (Refs & Annos)
Division 20. Miscellaneous Health and Safety Provisions
Chapter 6.5. Hazardous Waste Control (Refs & Annos)
Article 10.1.1. Lead-Containing Jewelry (Refs & Annos)

§ 25214.1. Definitions

For purposes of this article, the following definitions shall apply:

(a) "Amended consent judgment" means the amended consent judgment in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that was entered by the court on June 15, 2006.

(b) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(c) "Children" means children aged six and younger.

(d) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalogue, or online Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalogue, or online Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(e)(1) "Class 1 material" means any of the following materials:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonne.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(f) "Class 2 material" means any of the following materials:

(1) Electroplated metal that meets the following standards:

(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.

(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.

(B) On and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight.

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(g) "Class 3 material" means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(h) "Component" means any part of jewelry.

(i) "EPA reference methods 3050B (Acid Digestion of Sediments, Sludges and Soils) or 3051 (Microwave Assisted Digestion/ Sludge, Soils)" means those test methods incorporated by reference in paragraph (11) of subdivision (a) of Section 260.11 of Title 40 of the Code of Federal Regulations.

(j) "Jewelry" means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Decorated hair accessories.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Body piercing jewelry.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(k)(1) "Surface coating" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) "Surface coating" does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

Effective: January 01, 2007

§ 25214.2. Prohibition against manufacturing, shipping, selling, or offering for sale jewelry for retail sale in the state unless made from specified materials

(a) On and after March 1, 2008, a person shall not manufacture, ship, sell, or offer for sale jewelry for retail sale in the state unless the jewelry is made entirely from a class 1, class 2, or class 3 material, or any combination thereof.

(b) Notwithstanding subdivision (a), on and after September 1, 2007, a person shall not manufacture, ship, sell, or offer for sale children's jewelry for retail sale in the state unless the children's jewelry is made entirely from one or more of the following materials:

(1) A nonmetallic material that is a class 1 material.

(2) A nonmetallic material that is a class 2 material.

(3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.

(4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.

(5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(c) Notwithstanding subdivision (a), on and after March 1, 2008, a person shall not manufacture, ship, sell, or offer for sale body piercing jewelry for retail sale in the state unless the body piercing jewelry is made of one or more of the following materials:

(1) Surgical implant stainless steel.

(2) Surgical implant grade of titanium.

(3) Niobium (Nb).

(4) Solid 14 karat or higher white or yellow nickel-free gold.

(5) Solid platinum.

(6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

Effective: January 01, 2007

§ 25214.3. Violation; civil penalty; deposit in Hazardous Waste Control Account; parties to certain consent judgments deemed in compliance

(a) Notwithstanding this chapter, a person who violates this article shall not be subject to any criminal penalties imposed pursuant to this chapter and shall only be subject to the civil penalty specified in subdivision (b).

(b)(1) A person who violates this article shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this article, the court shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) All civil penalties collected pursuant to this article shall be deposited in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article.

(d) Notwithstanding subdivision (b), a party to the amended consent judgment, or a party to a consent judgment entered in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that contains identical or substantially identical terms as provided in Sections 2, 3, and 4 of the amended consent judgment, shall be deemed to be in compliance with this article, and any action brought to enforce this article against the party shall be subject to Section 4 of the amended consent judgment.

Effective: January 01, 2007

§ 25214.4. Testing methods and procedures

The testing methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B or 3051 for the material being tested, except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:

(a) When preparing a sample, the laboratory shall make every effort to assure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(b) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(c) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(d) A sample shall be digested in a container that is known to be free of lead and with the use of an acid that is not contaminated by lead, including analytical reagent grade digestion acids and reagent grade deionized water.

(e) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(f) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

Effective: January 01, 2007

§ 25214.4.1. Specific testing procedures for certain materials

In addition to the requirements of Section 25214.4, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.1 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a class 1 material the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.01 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Digested samples may require dilution prior to analysis.

(4) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Plastic beads or stones shall be crushed prior to digestion.

(4) Digested samples may require dilution prior to analysis.

(5) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(6) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) The number of pearls used to make the composite shall be noted.

(5) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead analysis.

(6) The digestate shall be diluted in the minimum volume practical for analysis.

(7) The digested sample shall be analyzed according to specification of an approved and validated methodology for inductively coupled plasma mass spectrometry.

(8) A reporting limit of 0.001 percent (10 parts per million) in the coating shall be obtained for the analysis.

(9) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal used in children's jewelry, the following testing protocols for determining weight shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the National Institute of Standards and Technology (NIST) of the Department of Commerce.

(3) The calibration of the scale shall be accurate to within 0.01 gram.

Effective: January 01, 2007

§ 25214.4.2. Regulations

The department may adopt regulations that modify the testing protocols specified in Sections 25214.4 and 25214.4.1, as it deems necessary to further the purposes of this article.

Current through Ch. 1 of 2007 Reg.Sess. urgency legislation
END OF DOCUMENT

Stevenson, Todd A.

From: Alexa Engelman [alexa@cehca.org]
Sent: Monday, March 12, 2007 1:55 PM
To: Stevenson, Todd A.
Cc: Michael Green; Eric Somers; Ryan Cabinte; Caroline Cox
Subject: Children's Jewelry Containing Lead ANPR
Attachments: CEH ANPR comments final 3_12_07.pdf; Health and Safety Code Section 25214.1 et seq.pdf

Alexa Engelman
Public Interest Litigation Coordinator
Center for Environmental Health

528 61st Street
Suite A
Oakland, CA 94609
510.594.9864 ex. 310
510.594.9863 (fax)
www.cehca.org

AMERICAN ASSOCIATION for JUSTICE

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Children's Jewelry Containing Lead ANPR

Dear Secretary:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Consumer Product Safety Commission's (CPSC) Advanced Notice of Proposed Rulemaking (ANPR) regarding children's jewelry containing lead. *See* 72 Fed. Reg. 920.

AAJ, with 52,000 members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, promote injury prevention, and foster the disclosure of information critical to public health and safety. AAJ applauds the CPSC for recognizing the pervasiveness of this problem and the need for a solution. AAJ believes that a mandatory rule declaring children's metal jewelry containing dangerous amounts of lead to be a banned hazardous substance is preferable to a voluntary industry-developed standard. AAJ also supports the creation of a labeling rule but only as a critical first step to address the issue.

I. The CPSC Should Institute a Mandatory Rule Declaring Children's Metal Jewelry Containing Lead to be a Banned Hazardous Substance

The CPSC seeks comments regarding available regulatory alternatives including the institution of mandatory or voluntary standards or the adoption of an existing standard. Given the potential health problems associated with the ingestion of lead and the availability of such toy jewelry to children, AAJ supports the creation of a mandatory rule declaring children's metal jewelry containing lead to be a banned hazardous substance. A voluntary standard will not adequately address this serious issue.

A. Voluntary Rules Are Not Sufficient Given the Seriousness of the Potential Health Hazard

More than 300,000 young American children have blood lead levels high enough to cause irreversible damage, which is caused in part by their exposure to the toxin through toys,

including toy jewelry.[1] The primary danger to young children from lead poisoning is brain damage, but it also can lead to lower IQ levels, hyperactivity, and developmental delays.[2] The likelihood of young children ingesting toy jewelry containing lead is significant. From 2000 to 2005, more than 300,000 children age 18 and younger were treated in hospital emergency rooms for injuries associated with foreign object ingestion and nearly 20,000 of such incidents involved jewelry items.[3] A child in Minnesota also died last year from ingestion of toy jewelry containing lead.[4]

The dangers associated with the absorption of lead into a child's bloodstream due to the swallowing of these items are in addition to the hazards associated with a child swallowing *any* foreign object.[5] In 1999, the American Association of Poison Control documented 182,105 incidents of foreign body ingestion by patients under twenty years old.[6] A child's ingestion of a foreign object can cause choking and perforation at any level of the gastrointestinal tract; as well as fevers and pains in the head, neck, and abdomen.[7] Clearly, an industry-created voluntary standard will not adequately address these potential hazards.

B. Foreign Manufacturers' Compliance Likely Will Diminish the Impact of Any Voluntary Standard

The potential for international manufacturers to ignore or otherwise fail to comply with voluntary safety standards intensifies the need for a mandatory standard. The CPSC already has recognized the potential hazards associated with imported products and their failure to comply with standards. In FY 2006, the CPSC announced 471 product recalls, two-thirds of which were for imported products.[8] Given that some lead contaminated items made for children are manufactured in countries with limited governmental regulation of lead in consumer goods, the creation of a voluntary standard likely will not alleviate the problem.[9] Moreover, recall notices

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[1] Children's Jewelry Containing Lead; Advanced Notice of Proposed Rulemaking (ANPRM); Request for Comments and Information, 72 Fed. Reg. 920 (proposed Jan. 9, 2007); *Keeping Your Kids Safe from Lead Jewelry* (Feb. 27, 2007) at http://www.sierraclub.org/healthycommunities/lead/.

[2] *Id.*

[3] *CPSC Staff Recommends Rulemaking to Address Lead in Children's Toy Jewelry*, 34 Prod. Safety & Liab. Rep. (BNA) 1173 (Dec. 11, 2006).

[4] *Keeping Your Kids Safe from Lead Jewelry* (Feb. 27, 2007) at http://www.sierraclub.org/healthycommunities/lead/.

[5] Casey M. Calkins, MD and Denis Bensard, MD, *Gastrointenstinal Foreign Bodies* (last updated Feb. 2, 2007) at http://www.emedicine.com/ped/topic2777.htm.

[6] *Id.*

[7] *Id.*

[8] Hearing on "Consumer Protection Issues" Before the Committee on Appropriations, Subcommittee on Financial Services and General Gov't., 110th Cong. (Feb. 28, 2007) (statement of the Honorable Nancy A. Nord, Acting Chairman of the CPSC).

[9] Centers for Disease Control, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity & Mortality Weekly Report (Mar. 31, 2006) at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5512a4.htm.

may not reach consumers as most recall processes (including the CPSC's web page for recalls and product safety news) require consumers to take proactive steps to receive such information.[10]

Evidence of international manufacturers' lack of compliance with voluntary standards is illustrated by their records regarding conformity with furniture standards. Although ASTM-International publishes a safety standard to prevent furniture tipover injuries, Consumers Union has indicated that many of the imported products it tested do not comply with the standards.[11] In fact, during the time period since the CPSC requested that ASTM develop such a standard, the numbers of annual fatalities associated with falling furniture actually have increased by 50 percent.[12] Today's highly competitive marketplace offers little incentive for foreign manufacturers to comply with such standards. These manufacturers will put children's safety at risk if they also fail to comply with a voluntary standard regarding lead in toy jewelry.

C. Further Delay in Issuing a Mandatory Standard Is Unacceptable

AAJ urges the Commission to act quickly to issue a mandatory standard. The CPSC already has issued several voluntary recalls of toy jewelry containing lead (including one recall for 150 million pieces), but consumers continue to report health-related problems associated with digestion of these items.[13] The CPSC also took the opportunity to change its lead policy in 2005 (without issuing a mandatory standard),[14] yet that has not disposed of these problems for children. The CPSC needs to move forward with a mandatory standard before other children become injured or die from lead ingestion.

II. The Creation of a Mandatory Labeling Rule Should be Combined With Other Initiatives in Order to Adequately Address this Issue

Among the regulatory alternatives listed by the CPSC is the creation of a labeling rule, which would require specified warnings and instructions for the use of children's metal jewelry. AAJ supports the creation of a labeling rule, which could provide critical information to parents and children. AAJ recommends that such label include language in both English and Spanish, given the large number of Spanish speakers in the country. The CPSC already has recognized

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[10] Hearing on "Consumer Protection Issues" Before the Committee on Appropriations, Subcommittee on Financial Services and General Gov't., 110th Cong. (Feb. 28, 2007) (statement of Rachel Weintraub, Dir. of Product Safety and Senior Counsel).

[11] Hearing on "Consumer Protection Issues" Before the Committee on Appropriations, Subcommittee on Financial Services and General Gov't., 110th Cong. (Feb. 28, 2007) (statement of Janell Mayo Duncan, Senior Counsel, Consumers Union).

[12] *Id.*

[13] *CPSC Announces Recall of Metal Jewelry Sold in Vending* Machines, CPSC Release #04-174 (issued July 8, 2004); *Reebok Recalls Bracelet Linked to Child's Lead Poisoning Death*, CPSC Release #06-119 (issued Mar. 23, 2006); *U.S. Toy Co. Recalls More Children's Butterfly Necklaces Due to Lead Poisoning*, CPSC Release #07-082 (issued Jan. 18, 2007).

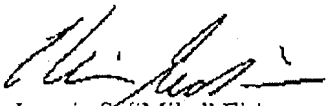
[14] *CPSC Announces New Policy Addressing Lead in Children's Metal Jewelry*, CPSC Release #05-097 (issued Feb. 3, 2005).

the importance of providing safety information in English and Spanish and, consequently, should require safety labels in both languages as well.[15]

However, a labeling rule alone would be insufficient to address this problem. Many consumers may be unable to read the label or may choose to ignore the label if they do not fully understand the problem or assume that their children would be unable to digest the jewelry. Therefore, it is vital that the CPSC enforce a mandatory rule, in addition to any labeling rule, to address the use of lead in children's toy jewelry.

AAJ appreciates this opportunity to submit comments in response to the Agency's Advanced Notice of Proposed Rulemaking regarding children's metal jewelry containing lead. If you have any questions or comments, please contact Gerie Voss, AAJ's Regulatory Counsel at (202) 965-3500 ext. 748.

Sincerely,



Lewis S. "Mike" Eidson
President
American Association for Justice

/gv

[15] The CPSC maintains a Spanish language website and provides safety information via Spanish language media outlets like Telemundo and Univision. Hearing on "Consumer Protection Issues" Before the Committee on Appropriations, Subcommittee on Financial Services and General Gov't., 110th Cong. (Feb. 28, 2007) (statement of the Honorable Nancy Nord).

Stevenson, Todd A.

From: Voss, Gerie [Gerie.Voss@justice.ORG]
Sent: Monday, March 12, 2007 1:54 PM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR
Attachments: Lead in Toy Jewelry.pdf

Dear Sir or Madam:

Attached please find the comments of the American Association for Justice on the above-referenced issue. Please let me know if you have any questions.

Thanks,
Gerie

Gerie Voss
Regulatory Counsel - Public Affairs
American Association for Justice
Formerly Association of Trial Lawyers of America
1050 31st Street, NW
Washington, DC 20007
Phone: 202-965-3500 ext. 748
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gerie.voss@justice.org
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Consumers Union
Nonprofit Publisher of Consumer Reports

Consumer Federation of America

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814
Via: cpsc-os@cpsc.gov.
Facsimile (301) 504-0127.

Comments of Consumers Union of U.S., Inc. and Consumer Federation of America to the U.S. Consumer Product Safety Commission on "Children's Jewelry Containing Lead; Advance Notice of Proposed Rulemaking; Request for Comments and Information"

Introduction

Consumers Union (CU), publisher of *Consumer Reports*®, joined by Consumer Federation of America, (jointly "We") submits the following comments in response to the U.S. Consumer Product Safety Commission's ("CPSC" or "Commission") above-referenced Advance Notice of Proposed Rulemaking ("ANPR") on children's jewelry containing lead.[1] The CPSC has published this Notice seeking comments and information on the health risks associated with lead in children's jewelry, and potential regulatory options to address these risks, particularly a ban on products containing more than 0.06%, by weight ("0.06%") lead under the Federal Hazardous Substances Act.

We strongly support the proposed ban as an important step forward in protecting children from the hazards of lead exposure, for many reasons, including: (i) the serious harm that can result from exposure to lead by children; (ii) the increasing presence on the U.S. market of lead in products intended for use by children; (iii) the difficulty of identifying unsafe products; and (iv) the inability of the recall system to locate and recapture, low-

[1] 72 Fed. Reg. 920 (January 9, 2007).

Consumers Union
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101 Truman Avenue
Yonkers, New York 10703-1057
(914) 378-2029
(914) 378-2992 (fax)

Washington Office
1101 17th Street, NW #500
Washington, DC 20036
(202) 462-6262
(202) 265-9548 (fax)

Consumer Federation of America
1620 I Street, NW
Suite 200
Washington, DC 230006
(202) 387-61211
(202) 265-7989 (fax)

cost, unbranded products. In addition, we strongly urge the CPSC to take stronger action to protect children from lead hazards in other products.

In the last three years, one child has died, and more than 20 recalls have been initiated due to the presence of lead in children's jewelry. Recalls also continue to be initiated for lead paint found on cribs and other products intended for use by children. Given the rising incidence of products, including children's jewelry, recalled due to the presence of lead, it is clear that the current approach of depending on compliance with voluntary standards is ineffective.

The effects of lead are often acute, severe and irreversible. It is our view that CPSC should be doing all it can to ensure that manufacturers find safer alternatives for lead in all consumer products, making children's products the first priority. Mandating the 0.06% limit on total lead in jewelry is the only effective option for children's jewelry, and stronger action is needed for other children's products as well. The EPA estimates that costs of screening and treatment of acute lead poisoning alone can exceed $5,200 per child[2]. Others estimate that the lifetime societal costs of lead poisoning exceed some $40 billion dollars annually[3]. In evaluating the need for a ban on lead in jewelry, we therefore also urge the Commission to consider the substantial, avoidable burdens of lead toxicity on society as a whole, and the health care system in particular.

The nature of children's jewelry, like many children's toys, makes identifying and tracking products known to contain dangerous levels of lead very difficult. Toy jewelry is small, inexpensive, quickly dispersed throughout the marketplace, and is virtually impossible to track once it is sold. These products are not labeled, lack serial numbers, and there usually are few, if any, unique features that would enable consumers to distinguish dangerous products from others. Consumers also have no practical way to screen these products for lead. Screening tools available to enable consumers to detect lead, such as

[2] U.S. Environmental Protection Agency, March 31, 2006. Cost of Illness Handbook, Downloaded from http://www.epa.gov/oppt/coi/pubs/ill_9.pdf on March 12, 2007.
[3] Landrigan, P., C. Schechter, J. Lipton, et al., "Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality and Costs for Lead Poisoning, Asthma, Cancer and Developmental Disabilities," Environmental Health Perspectives, Volume 110, Number 7, July 2002.

the LeadCheck swabs, do not work on most toy jewelry. The safety of this product category has been so compromised that consumers can no longer be sure that any toy jewelry they purchase is safe.

Even when products are recalled, there is no guarantee that they will remain off store shelves. CU's investigation of the recall system, published in the November of 2004 issue of *Consumer Reports*[4], found recalled products, including toy jewelry containing unsafe lead levels, being sold in Dollar Stores in the U.S. as well as in other countries. The increasing risks to children from the presence of these products on the market results from trends in the globalized economy that make it easier for hazardous materials and off-spec products to enter and remain in the U.S. marketplace and harder to keep unscrupulous facilities from continuing to supply unsafe products.

Without the serious consequences of a ban, manufacturers lack sufficient incentives to ensure that children's products do not contain lead. We strongly urge the CPSC to exercise its authority to initiate a ban in order to fulfill its responsibilities to protect our most vulnerable population.

CU's recent testing of certain consumer products has confirmed the presence of lead in holiday lights and vinyl lunchboxes.[5] CU also found that lead can be transferred to unwrapped food stored on vinyl surfaces. Lead can accumulate from multiple sources to generate average body burdens that exceed 10 µg/dl -- the level identified by the CDC as cause for concern. Because not all sources can be easily eliminated and because no safe childhood exposure threshold has been established for lead, it is imperative that we eliminate as many avoidable sources as possible. There is simply no reason for manufacturers' continued use of this chemical in paints or plastics, and especially in products intended for use by children. For the reasons cited above, we believe that the CPSC's current guidance threshold for lead in consumer products -- lead levels that result in no more than 15 µg of ingested lead per day -- is ineffective and fails to advance

[4] *Hazard in Aisle Five*, November 2004, Consumer Reports.
[5] *Safety Alert: Boy's Death Linked to Lead Bracelet, but Hazards go Beyond Jewelry*, March 2006, Consumer Reports; and *Prevent Holiday Hazards*, December 2005, Consumer Reports.

the federal government's stated goal of eliminating childhood lead poisoning by 2010. Instituting a ban and issuing stronger regulations for lead in consumer products is, therefore, a critical step in achieving this important goal.

Certain states, such as California, already have passed laws to limit the presence of lead in jewelry and other products. We strongly recommend that the CPSC develop this rulemaking in a manner that considers California Health and Safety Code §25214.1 *et seq.*, for toy jewelry, and the progress that approach has made through the stakeholder process. It is vital that state and federal governments move forward in a manner that promotes continued reductions in childhood lead exposure. CU and CFA also strongly urge that any regulatory proposals issued by the CPSC do not attempt to preempt stronger state laws or regulations -- either currently existing, or passed or promulgated in the future.

Conclusion

For the foregoing reasons, we strongly urge the Commission to move quickly to ban jewelry, intended for use by children, containing more than 0.06% lead. In addition we urge the CPSC to similarly ban, or substantively limit, lead in amounts exceeding 0.06% in other products intended for use by, or readily accessible to, children.

Respectfully submitted,

Janell Mayo Duncan
Senior Counsel
Consumers Union
Washington Office

Carolyn Cairns
Senior Project Leader,
Product Safety Department
Consumers Union
Headquarters

Rachel Weintraub
Director of Product Safety and
Senior Counsel
Consumer Federation
of America

Stevenson, Todd A.

From: Thomas, Theresa [tthomas@consumer.org]
Sent: Wednesday, March 14, 2007 3:16 PM
To: Stevenson, Todd A.
Subject: Corrected Comments - Children's Jewelry Containing Lead ANPR
Attachments: 0312_CU_CFA_Lead_Final.pdf

Here are corrected comments to replace the comments filed on 3/12/07 by Consumers Union and Consumer Federation of America.

Theresa Thomas
Office Administrator
Consumers Union - Washington Office
1101 17th Street, NW Suite 500
Washington, DC 20036
(202) 462-6262 - fax: (202) 265-9548

New York State Department of Environmental Conservation
Division of Fish, Wildlife, and Marine Resources
Wildlife Pathology Unit
108 Game Farm Road, Delmar, NY 12054

March 12, 2007

Children's Jewelry Containing Lead ANPR

These very high lead levels over 90% were of a toe ring and a bracelet from the 20 Mall in Guilderland, New York. Attached is the chain of custody.

Sincerely,

Ward B. Stone
Wildlife Pathologist

WBS:rr

From: Ward Stone
To: cpsc_os@cpsc.gov
Date: Mon, Mar 12, 2007 4:31 PM
Subject: Children's Jewelry Containing Lead ANPR

It is amazing to me, that in our great country, we have allowed heavily-leaded, cheap jewelry, much of it designed for children, to remain available for sale over all, or most of our country. Here in New York, I started looking at the availability of lead jewelry in the Albany area and looked at eight, Dollar, 99 cent, and cut-rate stores and all had a large selection of such jewelry in the form of charm bracelets, bracelets, necklaces, rings, toe rings and ear rings with very high lead contents. I also found two recently-made heavily-leaded charm bracelets (one marked 2004) in my 10 year old daughter's jewelry box. Fortunately she has not worn them.

The vast majority of hundreds of jewelry items I examined were marked as made in China with a few from India, and Korea. As I write this, it is clear that American children and adults are losing central nervous system neurons from this jewelry. In addition, one or more may be added to the lead fatality list from the lead jewelry.

The only responsible thing to do is stop the sale of the jewelry on an emergency, national basis. The jewelry is poorly labeled and none of what I looked at mentioned the high-lead content or any other metal.

Attached is some of my correspondence on leaded jewelry. Lead poisoning has been know for at least 2,000 years, why can't immediate action be taken to save the cognitive abilities of thousands of our children, and at least a few of their lives.

It appears that we are getting back some of our recycled lead back as poison for our children.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

From: Ward Stone
To: Edward Horn; James Crucetti; judith.schreiber@oag.state.ny.us
Date: Mon, Mar 5, 2007 1:54 PM
Subject: Lead in Jewelry

Below are some pictures of several bracelets that are highly lead positive, but there are also earrings, toe-rings, and necklaces that are also highly lead positive. They are all from local (Albany area) Dollar Stores. I suspect that thousands of dollar stores sell this stuff and that it is a national problem.

People (especially children) are losing neurons to this source as I write this, so getting the lead jewelry off the market and educated about it is imperative.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
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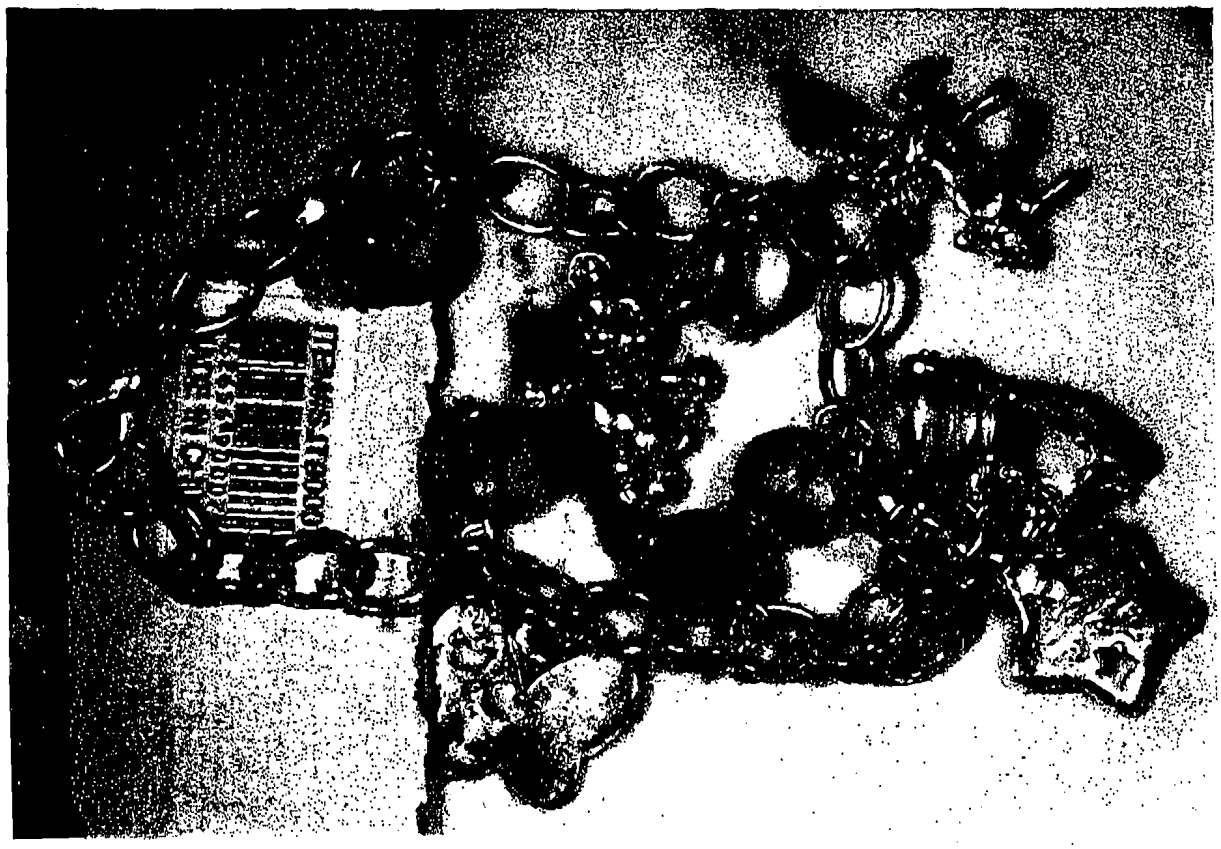

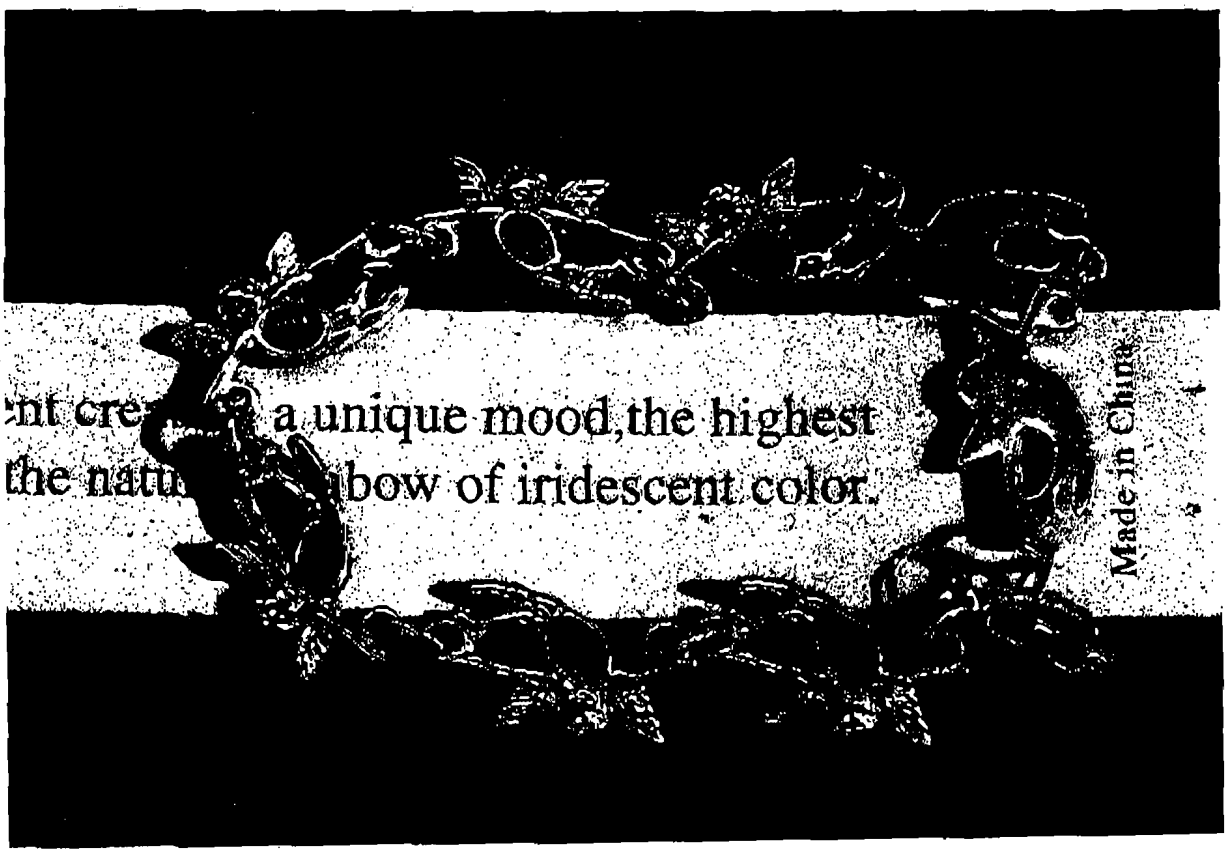
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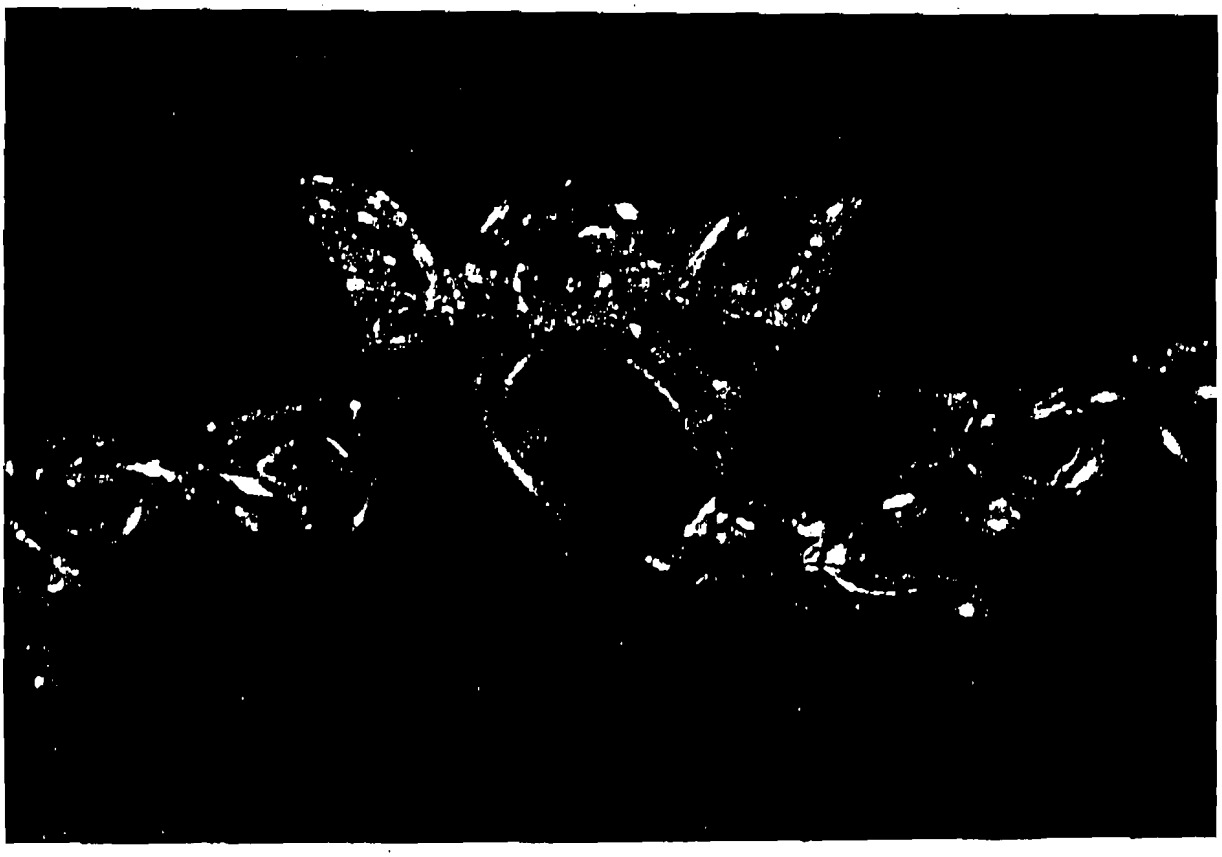
the natu bow of iridescent color.
Made in China


Made in China




MADE IN CHINA

From: Ward Stone
To: carnahan@edison-labs.com
Date: Wed, Mar 7, 2007 2:21 PM
Subject: Lead Jewelry

Dear Dr. Carnahan,

Thanks for the antimony identification in the lead jewelry piece from China. The antimony in the lead seems to indicate the lead came from recycled battery lead (e.g. from car battery). It makes one hypothesize that we might be getting back some of our own automotive battery lead in toy jewelry.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
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(518) 478-3035(F)

CC: duboism@assembly.state.ny.us; James Crucetti; Judith Enck; Judith.Schreiber@oag.state.ny.us; Stephen.Lukowski@albanycounty.com; tjc03@health.state.ny.us

From: Ward Stone
To: Judith.Enck@chamber.state.ny.us
Date: Thu, Mar 8, 2007 5:01 PM
Subject: Re: Lead Jewelry

Judy,

I have contacted Ed Horn at DOH and it seemed incredible that more had not been done on the issue of lead exposure from imported junk jewelry coming from China and to a lesser extent India.

I have talked twice with Lisa Kwon of the Attorney General's office and Judy Schreiber. The lead jewelry is present in many millions of pieces in the United States and should be made immediately unavailable to people, especially children. It appears that much of the lead in the jewelry comes from the lead recycled from computers and probably batteries. We may be getting back our own lead with which to poison our children.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

>>> <Judith.Enck@chamber.state.ny.us> 03/07/07 7:44 PM >>>

thanks Ward. sorry not to get back to you in a timely fashion. this is a great issue. when I ws in the AG's office we worked on lead in lunch boxes.if you haven't already, pelase be in touch with Judy Schreiber, a very skilled toxicologistitn he AG's office: 474 4819. Ideally, the state health dept should be taking this on
Judith Enck
Deputy Secretary for the Environment
Executive Chamber
State Capitol
Albany, NY 12224
518-473-5442

From: Ward Stone
To: lisa.kwong@oag.state.ny.us
Date: Fri, Mar 9, 2007 10:48 AM
Subject: Lead in the Environment

Dear Ms. Kwong:

You have probably seen these CDC, MMWR references on two small children who apparently accidently ingested lead jewelry. From these cases, one would think that the massive lead jewelry threat to human health would be history, but that is not the case with millions of pieces of cheap leaded jewelry for a single dollar a piece for sale in the United States. In addition, millions of these lead jewelry items are already in the homes of millions of Americans, so an educational program to get them away from children is immediately needed. More education on the threat of the lead jewelry is needed now. If parents know of the threat, most parents would take the jewelry away from their children. I will expand our sampling today and this weekend with testing Sunday. I am appalled that national movement on this issue is moving at a "snails pace", that will ultimately result in some, what I would deem, unnecessary deaths. In addition, of much larger magnitude will be the lighter lead poisonings expected to occur by the thousands (much of which will go undiagnosed) and the loss of cognitive power of our children that will be with them for the rest of their lives. New York State, in my view, needs to lead the way with faster action than California.

The lead is obviously a threat to adults as well, I have stressed children since they are the most sensitive to lead intoxication, and are innocent victims not old enough to make experienced judgements.

I have also stressed the dollar stores and cut-rate stores because of the huge quantity of unlabeled (for lead and other risks) items on sale. I have noted that this cheap jewelry easily falls apart and provides small lead pieces that could be readily swallowed by a child or adult. Children with a small amount of money can purchase this lead jewelry themselves, and shopping in such a store can be a parental reward by a parent who does not know the danger that can come with such shopping. However, leaded jewelry can be a problem in pricey stores as well. I just am making a high-priority where the greatest tonnage of lead jewelry is available.

http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5323a5.htm

http://www.cdc.gov/mmwr/preview/mmwrhtml/mm55d323a1.htm

Attached e-mail to Assemlbyman Englebright

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

CC: Judith Enck; Judith.Schreiber@oag.state.ny.us

From: Ward Stone
To: engles@assembly.state.ny.us
Date: Wed, Mar 7, 2007 10:52 AM
Subject: Lead in the Environment

Dear Assemblyman Englebright:

I want to thank you for your long-term efforts to reduce the use of lead fishing sinkers in New York State. However, there is a great need to add on the lead jigs and other lure weights in order to protect waterbirds, people, and the environment. In addition, hundreds of thousands of cheap, high lead-containing jewelry is on sale for a dollar in New York State in dollar and 99 cent stores. This jewelry does not carry a warning label that lead is present in the jewelry (something that would stop many parents and gift-givers from buying it and giving it to children). Such jewelry may be placed in a child's mouth repeatedly, resulting in buildup of lead in the child's tissues. Lead is accumulative and could come from multiple sources, such as leaded paint, cheap lead-containing jewelry and lead-containing toys, and things such as fishing sinkers all in a short span of time, or essentially in the same time span, resulting in a loss of neurons and cognitive ability (or worse) for the rest of a child's life. Rapid action is needed to remove lead from exposure to our children, animals, and the environment, children being the highest priority. State, Environmental Protection Agency, and the Consumer Protection Board action on lead moves at a snail's pace when fast-action could prevent much human morbidity and some mortality and certainly conserve cognitive ability on our children.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

From: Ward Stone
To: martge@consumer.org
Date: Mon, Mar 12, 2007 9:32 AM
Subject: Re: Consumers Union

I am hoping that Consumer Reports can present a warning on the high lead in cheap jewelry that is often worn by the young, most of them children in the 4 to 16 years of age range. This is a very sensitive age for exposure to lead, since it is a critical time for nervous system development. Jim Carnahan recommended contacting you and spoke highly of you. I will be out in the morning at a legislative meeting on lead jewelry. A warning in Consumer Reports would reach the entire country and beyond and save cognitive powers and perhaps several lives.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

>>> "Jim Carnahan" <carnahan@edison-labs.com> 03/08/07 11:12 AM >>>

Ward,

You might want to alert Geoffrey Martin about your findings.

Geoffrey Martin, PhD
Director, Consumer Sciences
Consumer Reports
martge@consumer.org
office: 914-378-2356
Regards,

James Carnahan

Edison Analytical Laboratories, Inc.
301 Nott Street
Schenectady, NY 12305

(518) 393-2112

CC: Jim Carnahan; Judith.Schreiber@oag.state.ny.us

Adirondack Environmental Services, Inc.

Experience is the solution
314 North Pearl Street • Albany, New York 12207
(800) 848-4983 • (518) 434-4546 • Fax (518) 434-0891

March 12, 2007

Ward B. Stone
NYS DEC
Division of Fish, Wildlife & Marine Resources
Wil
Delmar, NY 12054

TEL: (518) 478-3032
FAX:

Work Order No: 070308049

RE: Dollar Store

Dear Ward B. Stone:

Adirondack Environmental Services, Inc received 2 samples on 3/8/2007 for the analyses presented in the following report.

There were no problems with the analyses and all associated QC met EPA or laboratory specifications, except if noted.

If you have any questions regarding these tests results, please feel free to call.

Sincerely,

Tara Daniels
Laboratory Manager

ELAP#: 10709
AIHA#: 100307

Qualifiers:	ND - Not Detected at the Reporting Limit	S - Spike Recovery outside accepted recovery limits
	J - Analyte detected below quantitation limits	R - RPD outside accepted recovery limits
	B - Analyte detected in the associated Method Blank	T - Tentatively Identified Compound-Estimated Conc.
	X - Value exceeds Maximum Contaminant Level	E - Value above quantitation range

Adirondack Environmental Services, Inc

Date: *12-Mar-07*

CLIENT:	NYS DEC	Client Sample ID:	070706
Work Order:	070308049	Collection Date:	3/4/2007
Reference:	Dollar Store /	Lab Sample ID:	070308049-001
PO#:		Matrix:	SOLID

Analyses	Result	PQL	Qual	Units	DF	Date Analyzed
ICP METALS SW6010B (Prep: SW3050A - 3/9/2007)						Analyst: KH
Lead	971000	50.0		µg/g	100	3/12/2007 3:42:00 PM

Qualifiers:	ND - Not Detected at the Reporting Limit	S - Spike Recovery outside accepted recovery limits
	J - Analyte detected below quantitation limits	R - RPD outside accepted recovery limits
	B - Analyte detected in the associated Method Blank	T - Tentatively Identified Compound-Estimated Conc.
	X - Value exceeds Maximum Contaminant Level	E - Value above quantitation range

Adirondack Environmental Services, Inc

Date: *12-Mar-07*

CLIENT:	NYS DEC	**Client Sample ID:**	070707
Work Order:	070308049	**Collection Date:**	3/4/2007
Reference:	Dollar Store /	**Lab Sample ID:**	070308049-002
PO#:		**Matrix:**	SOLID

Analyses	Result	PQL	Qual	Units	DF	Date Analyzed
ICP METALS SW6010B (Prep: SW3050A - 3/9/2007)						Analyst: KH
Lead	976000	50.0		µg/g	100	3/12/2007 3:49:00 PM

Qualifiers:

ND - Not Detected at the Reporting Limit
J - Analyte detected below quantitation limits
B - Analyte detected in the associated Method Blank
X - Value exceeds Maximum Contaminant Level
S - Spike Recovery outside accepted recovery limits
R - RPD outside accepted recovery limits
T - Tentitively Identified Compound-Estimated Conc.
E - Value above quantitation range

82-14-84 (7/85)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAIN OF CUSTODY

I, Ward Stone (Print Name), of 108 Game Farm Rd. (Print Address) have collected the on March 4, 2007 ~~1985~~ from the Dollar Store in the vicinity of 20 Mall, Western Ave Town of Guilderland, Albany County.

Items: Bracelet

said sample(s) were in my possession and handled according to standard procedures provided to me prior to collection. The sample(s) were placed in the custody of a representative of the New York State Department of Environmental Conservation on March 4, 2007 ~~1985~~.

Wm. Ward Stone — Signature

3/8/07 — Date

I, Jason Pensabene, have received the above mentioned samples on the date specified have assigned identification number(s) 070707 to the sample(s). ave recorded pertinent data for the sample(s) on the attached collection records. The sample(s) remained in my custody until subsequently transferred, prepared or shipped at times and dates as attested to below.

Signature

3/8/07 — Date

SECOND RECIPENT (Print Name): Jason Pensabene	TIME AND DATE: 4:00 3/8/07	PURPOSE OF TRANSFER: Transport to lab for Pb content test.
SIGNATURE	UNIT: NYSDEC WPU	
THIRD RECIPENT (Print Name): T. Mihaler	TIME AND DATE: 3/8/07 4:45pm	PRUPOSE OF TRANSFER
SIGNATURE	UNIT	
FOURTH RECIPENT (Print Name)	TIME AND DATE	PURPOSE OF TRANSFER
SIGNATURE	UNIT	
RECEIVED IN LABORATORY BY (Print Name)	TIME AND DATE	
SIGNATURE	UNIT	
LOGGED IN BY (Print Name)	TIME AND DATE	ACCESSION NUMBERS:
SIGNATURE	UNIT	

82-14-84 (7/85)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAIN OF CUSTODY

I, Ward Stone (Print Name), of 108 Game Farm Rd. (Print Address) have collected the on March 4, 2007 from Dollar Store in the vicinity of Delaware Ave. (Rte 443) Town of ~~[illegible]~~ Bethlehem Albany County.

Items: Toe Rings

said sample(s) were in my possession and handled according to standard procedures provided to me prior to collection. The sample(s) were placed in the custody of a representative of the New York State Department of Environmental Conservation on March 4, 2007

W. Ward Stone — Signature

3/8/07 — Date

I, Jason Pensabene, have received the above mentioned samples on the date specified have assigned identification number(s) 070706 to the sample(s). recorded pertinent data for the sample(s) on the attached collection records. The sample(s) remained in my custody until subsequently transferred, prepared or shipped at times and dates as attested to below.

Signature

3/8/07 — Date

SECOND RECIPENT (Print Name): Jason Pensabene	TIME AND DATE: 4:00 3/8/07	PURPOSE OF TRANSFER: transport to lab for Pb content analysis
SIGNATURE	UNIT: NYSDEC WPU	
THIRD RECIPENT (Print Name): J. Minalek	TIME AND DATE: 3/8/07 4:45pm	PRUPOSE OF TRANSFER
SIGNATURE	UNIT	
FOURTH RECIPENT (Print Name)	TIME AND DATE	PURPOSE OF TRANSFER
SIGNATURE	UNIT	
RECEIVED IN LABORATORY BY (Print Name)	TIME AND DATE	
SIGNATURE	UNIT	
LOGGED IN BY (Print Name)	TIME AND DATE	ACCESSION NUMBERS:
SIGNATURE	UNIT	

82-14-84 (7/85)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAIN OF CUSTODY

I, Ward Stone (Print Name), of 108 Game Farm Rd. (Print Address) have collected the on March 4, 2007 from Dollar Store in the vicinity of Delaware Ave. (Rt 443) Town of ~~[illegible]~~ Bethlehem Albany County.

Items: Toe Rings

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W. Ward Stone — Signature — 3/8/07 — Date

I, Jason Pensabene, have received the above mentioned samples on the date specified have assigned identification number(s) 070706 to the sample(s). recorded pertinent data for the sample(s) on the attached collection records. The sample(s) remained in my custody until subsequently transferred, prepared or shipped at times and dates as attested to below.

Signature — 3/8/07 — Date

SECOND RECIPENT (Print Name) Jason Pensabene	TIME AND DATE 4:00 3/8/07	PURPOSE OF TRANSFER transport to lab for
SIGNATURE	UNIT NYSDEC WPU	Pb content analysis
THIRD RECIPENT (Print Name)	TIME AND DATE	PRUPOSE OF TRANSFER
SIGNATURE	UNIT	
FOURTH RECIPENT (Print Name)	TIME AND DATE	PURPOSE OF TRANSFER
SIGNATURE	UNIT	
RECEIVED IN LABORATORY BY (Print Name)	TIME AND DATE	
SIGNATURE	UNIT	
LOGGED IN BY (Print Name)	TIME AND DATE	ACCESSION NUMBERS:
SIGNATURE	UNIT	

82-14-54 (7/85)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAIN OF CUSTODY

I, Ward Stone (Print Name), of 108 Game Farm Rd. (Print Address) have collected the on March 4, 2007 ~~198~~, from the Dollar Store in the vicinity of 20 Mall, Western Ave. Town of Guilderland, Albany County.

Items: Bracelet

said sample(s) were in my possession and handled according to standard procedures provided to me prior to collection. The sample(s) were placed in the custody of a representative of the New York State Department of Environmental Conservation on March 4, 2007 ~~198~~.

Wm. Ward Stone — Signature

3/8/07 — Date

I, Jason Pensabene, have received the above mentioned samples on the date specified have assigned identification number(s) 070707 to the sample(s). ve recorded pertinent data for the sample(s) on the attached collection records. The sample(s) remained in my custody until subsequently transferred, prepared or shipped at times and dates as attested to below.

Signature — 3/8/07 Date

SECOND RECIPENT (Print Name): Jason Pensabene	TIME AND DATE: 4:00 3/8/07	PURPOSE OF TRANSFER: Transport to lab for Pb content test.
SIGNATURE	UNIT: NYSDEC WPU	
THIRD RECIPENT (Print Name)	TIME AND DATE	PRUPOSE OF TRANSFER
SIGNATURE	UNIT	
FOURTH RECIPENT (Print Name)	TIME AND DATE	PURPOSE OF TRANSFER
SIGNATURE	UNIT	
RECEIVED IN LABORATORY BY (Print Name)	TIME AND DATE	
SIGNATURE	UNIT	
LOGGED IN BY (Print Name)	TIME AND DATE	ACCESSION NUMBERS:
SIGNATURE	UNIT	

SEE REVERSE SIDE

********** -JOURNAL- ********** DATE MAR-12-2007 ***** TIME 16:15 ********

NO.	COMM.	PAGES	FILE	DURATION	X/R	IDENTIFICATION	DATE	TIME	DIAGNOSTIC
01	OK	001	170	00:00:53	RCV		MAR-03	08:34	0507C0000A070
02	OK	001	171	00:00:53	RCV		MAR-03	09:40	050FC0000A070
03	420	000	172	00:00:38	RCV		MAR-05	09:46	0000C00000000
04	OK	002/002	173	00:00:35	XMT	☎ 92024935888	MAR-05	16:25	0107A2000A070
05	OK	001	174	00:00:34	RCV		MAR-06	10:10	0507C0000A070
06	OK	010/010	175	00:02:13	XMT	☎ 92027416065	MAR-06	10:37	0107A2000A070
07	OK	002	176	00:00:47	RCV		MAR-06	15:28	040FC0000A070
08	OK	004/004	177	00:01:04	XMT	☎ 914787573144	MAR-06	16:17	0107A2000A070
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10	OK	001	179	00:00:29	RCV		MAR-07	14:33	0507C0000A070
11	OK	005	180	00:02:01	RCV	202 637 2201	MAR-07	17:14	0507C0000A070
12	OK	008	181	00:06:47	RCV		MAR-07	18:18	0417C0000A070
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21	STOP	000/002	190	00:00:00	XMT	☎ 92404051492	MAR-09	16:18	0000000000000
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28	OK	005	197	00:01:43	RCV	9494717020	MAR-12	11:09	0507C0000A070
29	OK	002	198	00:00:41	RCV	18662348505	MAR-12	13:50	0507C0000A070
30	OK	004	199	00:01:29	RCV		MAR-12	15:14	0407C0000A070
31	OK	007	200	00:02:55	RCV	802 828 2154	MAR-12	15:37	0507C0000A070
32	OK	015	201	00:03:36	RCV		MAR-12	16:12	C407C0009A070

-CPSC OFC OF SECRETARY -

********** -CPSC - ***** - 301 504 0127- **********

(301) 504-0121

FAX TRANSMISSION

NYS Department of Environmental Conservation

THE WILDLIFE PATHOLOGY UNIT
Wildlife Resources Center
108 Game Farm Road
Delmar, New York 12054
(518) 478-3032
FAX: (518) 478-3035

TO: Comments

FROM: DR. Ward Stone PAGES: (plus cover)

DATE: 3/12/07 TIME:

COMMENTS: Children's Jewelry Containing Lead ANPR

From: Ward Stone
To: cpsc-os@cpsc.gov
Date: Mon, Mar 12, 2007 4:07 PM
Subject: Children's Jewelry Containing Lead ANPR

It is amazing to me, that in our great country, we have allowed heavily-leaded, cheap jewelry, much of it designed for children, to remain available for sale over all, or most of our country. Here in New York, I started looking at the availability of lead jewelry in the Albany area and looked at eight, Dollar, 99 cent, and cut-rate stores and all had a large selection of such jewelry in the form of charm bracelets, bracelets, necklaces, rings, toe rings and ear rings with very high lead contents. I also found two recently-made heavily-leaded charm bracelets (one marked 2004) in my 10 year old daughter's jewelry box. Fortunately she has not worn them.

The vast majority of hundreds of jewelry items I examined were marked as made in China with a few from India, and Korea. As I write this, it is clear that American children and adults are losing central nervous system neurons from this jewelry. In addition, one or more may be added to the lead fatality list from the lead jewelry.

The only responsible thing to do is stop the sale of the jewelry on an emergency, national basis. The jewelry is poorly labeled and none of what I looked at mentioned the high-lead content or any other metal.

Attached is some of my correspondence on leaded jewelry. Lead poisoning has been know for at least 2,000 years, why can't immediate action be taken to save the cognitive abilities of thousands of our children, and at least a few of their lives.

It appears that we are getting back some of our recycled lead back as poison for our children.

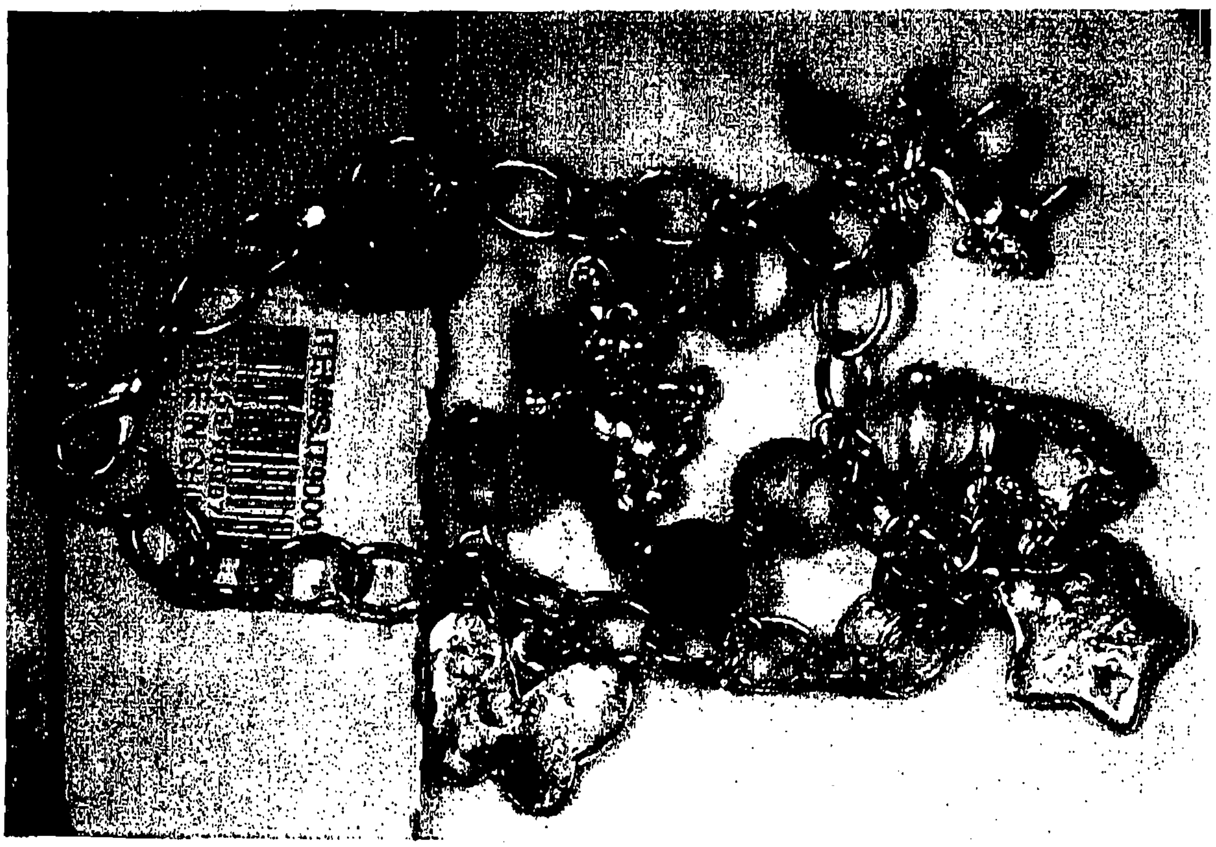
Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

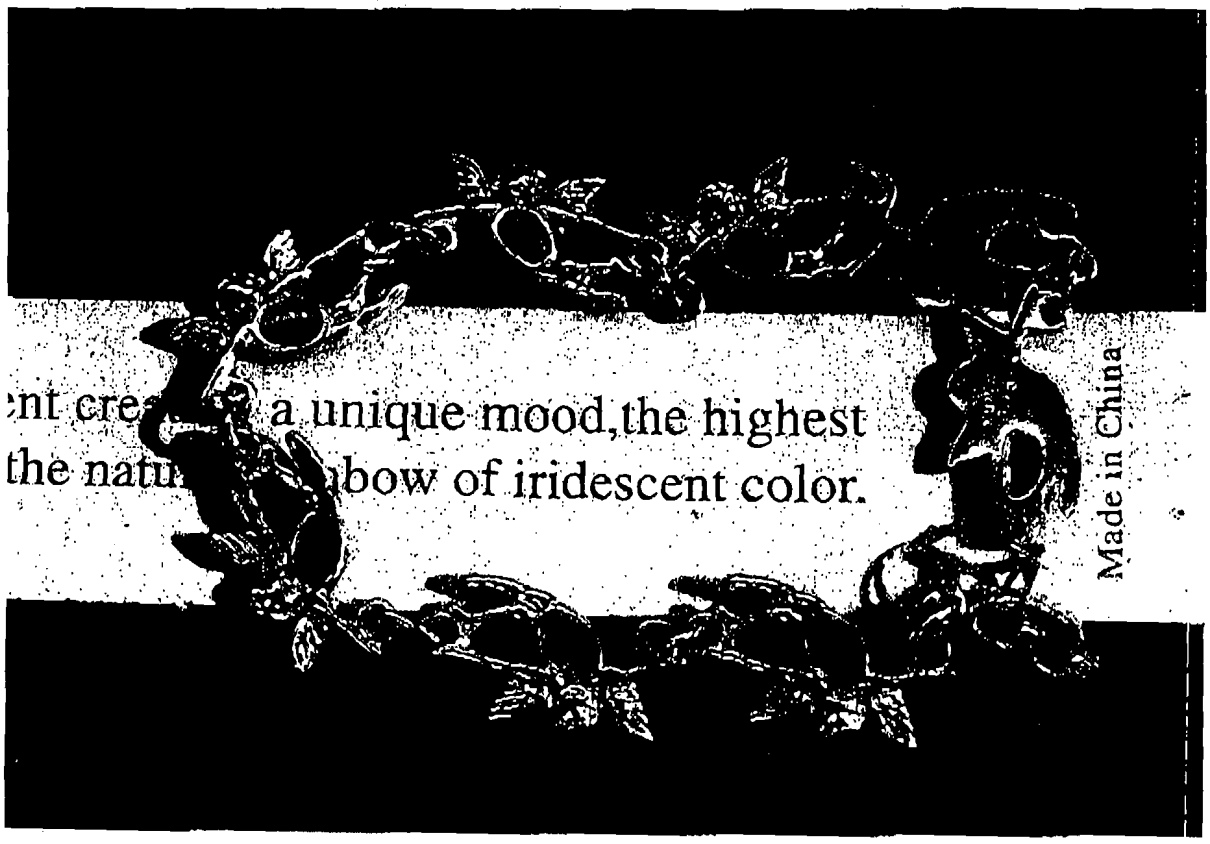
From: Ward Stone
To: Edward Horn; James Crucetti; judith.schreiber@oag.state.ny.us
Date: Mon, Mar 5, 2007 1:54 PM
Subject: Lead in Jewelry

Below are some pictures of several bracelets that are highly lead positive, but there are also earrings, toe-rings, and necklaces that are also highly lead positive. They are all from local (Albany area) Dollar Stores. I suspect that thousands of dollar stores sell this stuff and that it is a national problem.

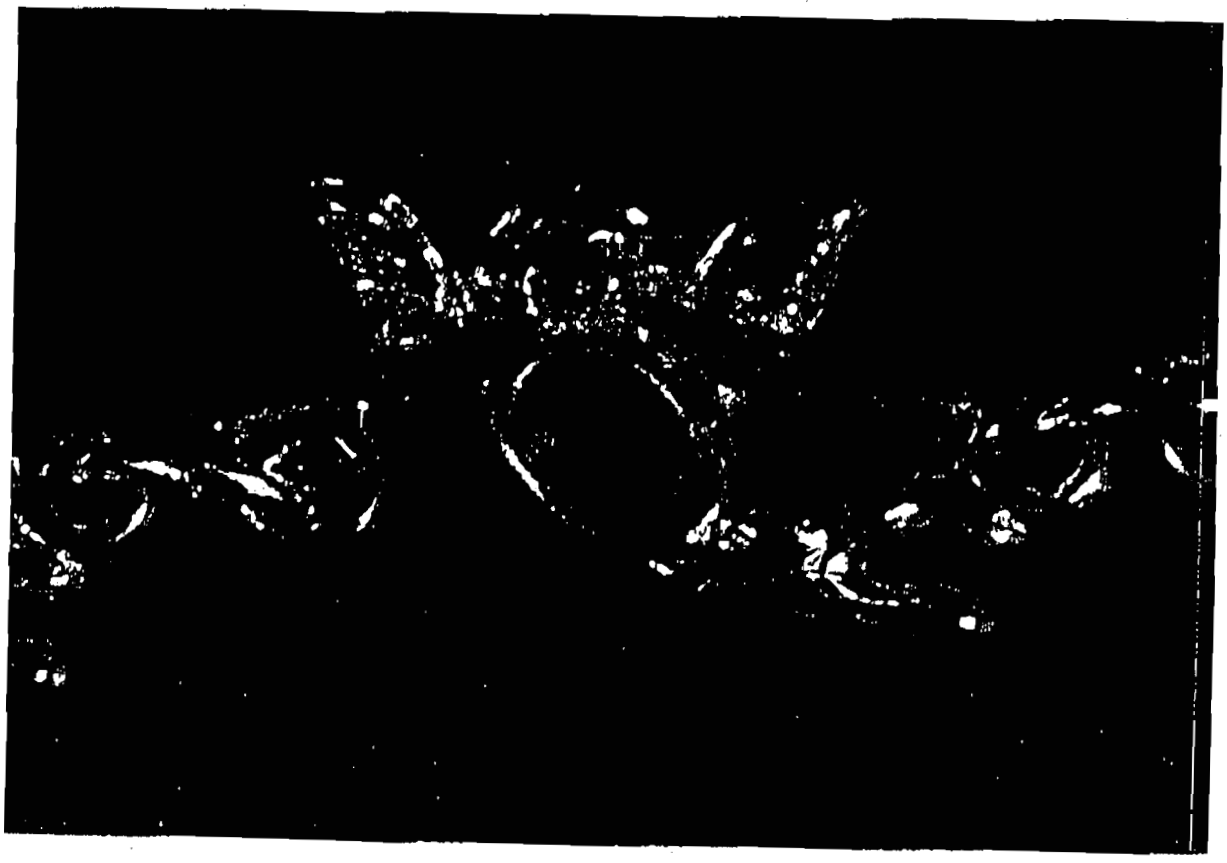
People (especially children) are losing neurons to this source as I write this, so getting the lead jewelry off the market and educated about it is imperative.

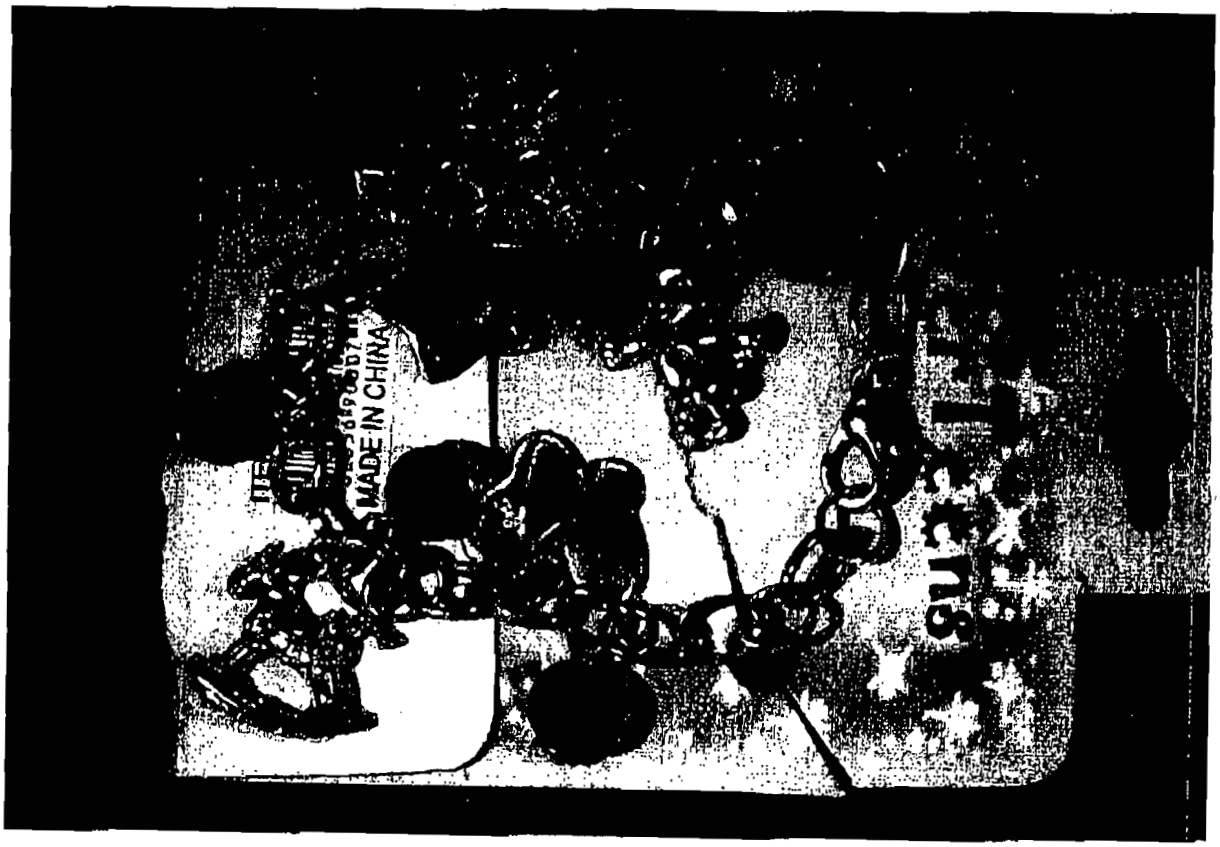
Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)




nt cre a unique mood,the highest
the natu bow of iridescent color.
Made in China


Made in China




MADE IN CHINA

Ward Stone - Lead Jewelry

From: Ward Stone
To: carnahan@edison-labs.com
Date: 3/7/2007 2:21:17 PM
Subject: Lead Jewelry
CC: duboism@assembly.state.ny.us; James Crucetti; Judith Enck; Judith.Schreiber@oag.state.ny.us; Stephen.Lukowski@albanycounty.com; tjc03@health.state.ny.us

Dear Dr. Carnahan,

Thanks for the antimony identification in the lead jewelry piece from China. The antimony in the lead seems to indicate the lead came from recycled battery lead (e.g. from car battery). It makes one hypothesize that we might be getting back some of our own automotive battery lead in toy jewelry.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
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Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

From: Ward Stone
To: Judith.Enck@chamber.state.ny.us
Date: Thu, Mar 8, 2007 5:01 PM
Subject: Re: Lead Jewelry

Judy,

I have contacted Ed Horn at DOH and it seemed incredible that more had not been done on the issue of lead exposure from imported junk jewelry coming from China and to a lesser extent India.

I have talked twice with Lisa Kwon of the Attorney General's office and Judy Schreiber. The lead jewelry is present in many millions of pieces in the United States and should be made immediately unavailable to people, especially children. It appears that much of the lead in the jewelry comes from the lead recycled from computers and probably batteries. We may be getting back our own lead with which to poison our children.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
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(518) 478-3032
(518) 478-3035(F)

>>> <Judith.Enck@chamber.state.ny.us> 03/07/07 7:44 PM >>>

thanks Ward. sorry not to get back to you in a timely fashion. this is a great issue. when I ws in the AG's office we worked on lead in lunch boxes.if you haven't already, pelase be in touch with Judy Schreiber, a very skilled toxicologistitn he AG's office: 474 4819. Ideally, the state health dept should be taking this on

Judith Enck
Deputy Secretary for the Environment
Executive Chamber
State Capitol
Albany, NY 12224
518-473-5442

Ward Stone - Lead in the Environment

From: Ward Stone
To: lisa.kwong@oag.state.ny.us
Date: 3/9/2007 10:48:49 AM
Subject: Lead in the Environment
CC: Judith Enck; Judith.Schreiber@oag.state.ny.us

Dear Ms. Kwong:

You have probably seen these CDC, MMWR references on two small children who apparently accidently ingested lead jewelry. From these cases, one would think that the massive lead jewelry threat to human health would be history, but that is not the case with millions of pieces of cheap leaded jewelry for a single dollar a piece for sale in the United States. In addition, millions of these lead jewelry items are already in the homes of millions of Americans, so an educational program to get them away from children is immediately needed. More education on the threat of the lead jewelry is needed now. If parents know of the threat, most parents would take the jewelry away from their children. I will expand our sampling today and this weekend with testing Sunday. I am appalled that national movement on this issue is moving at a "snails pace", that will ultimately result in some, what I would deem, unnecessary deaths. In addition, of much larger magnitude will be the lighter lead poisonings expected to occur by the thousands (much of which will go undiagnosed) and the loss of cognitive power of our children that will be with them for the rest of their lives. New York State, In my view, needs to lead the way with faster action than California.

The lead is obviously a threat to adults as well, I have stressed children since they are the most sensitive to lead intoxication, and are innocent victims not old enough to make experienced judgements.

I have also stressed the dollar stores and cut-rate stores because of the huge quantity of unlabeled (for lead and other risks) items on sale. I have noted that this cheap jewelry easily falls apart and provides small lead pieces that could be readily swallowed by a child or adult. Children with a small amount of money can purchase this lead jewelry themselves, and shopping in such a store can be a parental reward by a parent who does not know the danger that can come with such shopping. However, leaded jewelry can be a problem in pricey stores as well. I just am making a high-priority where the greatest tonnage of lead jewelry is available.

http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5323a5.htm

http://www.cdc.gov/mmwr/preview/mmwrhtml/mm55d323a1.htm

Attached e-mail to Assemblyman Englebright

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
NYS Dept. Environmental Conservation
Wildlife Pathology Unit
108 Game Farm Road
Delmar, NY 12054
wbstone@gw.dec.state.ny.us
(518) 478-3032
(518) 478-3035(F)

Ward Stone - Lead in the Environment

From: Ward Stone
To: engles@assembly.state.ny.us
Date: 3/7/2007 10:52:53 AM
Subject: Lead in the Environment

Dear Assemblyman Englebright:

I want to thank you for your long-term efforts to reduce the use of lead fishing sinkers in New York State. However, there is a great need to add on the lead jigs and other lure weights in order to protect waterbirds, people, and the environment. In addition, hundreds of thousands of cheap, high lead-containing jewelry is on sale for a dollar in New York State in dollar and 99 cent stores. This jewelry does not carry a warning label that lead is present in the jewelry (something that would stop many parents and gift-givers from buying it and giving it to children). Such jewelry may be placed in a child's mouth repeatedly, resulting in buildup of lead in the child's tissues. Lead is accumulative and could come from multiple sources, such as leaded paint, cheap lead-containing jewelry and lead-containing toys, and things such as fishing sinkers all in a short span of time, or essentially in the same time span, resulting in a loss of neurons and cognitive ability (or worse) for the rest of a child's life. Rapid action is needed to remove lead from exposure to our children, animals, and the environment, children being the highest priority. State, Environmental Protection Agency, and the Consumer Protection Board action on lead moves at a snail's pace when fast-action could prevent much human morbidity and some mortality and certainly conserve cognitive ability on our children.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
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Adjunct Professor, College of Saint Rose
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Ward Stone - Re: Consumers Union

From: Ward Stone
To: martge@consumer.org
Date: 3/12/2007 9:32:33 AM
Subject: Re: Consumers Union
CC: Jim Carnahan; Judith.Schreiber@oag.state.ny.us

I am hoping that Consumer Reports can present a warning on the high lead in cheap jewelry that is often worn by the young, most of them children in the 4 to 16 years of age range. This is a very sensitive age for exposure to lead, since it is a critical time for nervous system development. Jim Carnahan recommended contacting you and spoke highly of you. I will be out in the morning at a legislative meeting on lead jewelry. A warning in Consumer Reports would reach the entire country and beyond and save cognitive powers and perhaps several lives.

Ward B. Stone, B.A., M.S., Sc. D. (Hon.)
Wildlife Pathologist,
Adjunct Professor, SUNY Cobleskill
Adjunct Professor, College of Saint Rose
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>>> "Jim Carnahan" <carnahan@edison-labs.com> 03/08/07 11:12 AM >>>
Ward,

You might want to alert Geoffrey Martin about your findings.

Geoffrey Martin, PhD
Director, Consumer Sciences
Consumer Reports
martge@consumer.org
office: 914-378-2356

Regards,

James Carnahan

Edison Analytical Laboratories, Inc.
301 Nott Street
Schenectady, NY 12305

(518) 393-2112

Stevenson, Todd A.

From: John Witter [digh@juno.com]
Sent: Monday, March 12, 2007 8:55 PM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR

Please take action to protect our children from lead poisoning.

Thank You

John Witter
12 Edgewood Dr
New Paltz, NY 12561

845.256.0929

Stevenson, Todd A. 37

From: Sharon Richards Weiser [srweiser@columbus.rr.com]
Sent: Monday, March 12, 2007 11:22 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

Dear Nancy A. Nord,

I was alarmed to learn that the Consumer Product Safety Commission allows companies to produce and market children's jewelry containing lead, and that the Commission is considering allowing the very companies who stand to profit from marketing these toys to decide whether or not to warn parents of the danger of the presence of lead in their products. As the arbiter of safety for the toys our country's children play with and the products we use, I respectfully request that the Consumer Product Safety Commission set a mandatory standard banning lead from toy jewelry from March 15, 2007 onward in order to remove the potential for unecessary harm from such dangerous products. Please consider banning lead from toy jewelry production and recalling hazardous lead toy jewelry already on store shelves.

Over 300,000 children in the U.S. alone suffer from unacceptably high levels of lead in their blood. High levels of lead in a human bloodstream are commonly known to cause brain damage, lower IQ, induce hyperactivity, and result in developmental delays. In some cases the affected children have died from lead poisoning. Over the past seven years, more than 20,000 children visited hospital emergency rooms as a result of swallowing jewelry. Although it's unknown how many pieces of injested jewelry contained lead, there is no reason to subject children to that kind of risk from lead at all.

I urge you to please, institute a mandatory rule for toy jewelry to be free from lead. There are jewelry base metals available that do not contain lead. I would offer that you read up a little on jewelry base metals in "Metal Techniques for Craftsmen:..." by Oppi Untracht. This remains the probably one of the best standard works on the subject. I would rather pay a little bit more for a piece of toy base metal jewelry without lead that is safe than pay less for a piece of lead toy jewelry whose health cost for my daughter may prove devastating. Yes, I know it costs more money to make toy jewelry from other base metal alloys. They cost more to cast because they require higher temperatures to melt. The metal stock costs more. Thus, the manufacturer has a higher production cost per unit. Sorry, but that's part of the cost of doing business. I also suggest that all other pieces of lead jewelry offered for sale here in the U.S. begun after April 1, 2007 should display a lead hallmark. Enameled jewelry that contains lead should at least have an affixed adhesive-backed sticker that states the lead content or a hallmark stamped in the back EN PB. All other products containing lead should be required to at least display an adhered label, as do decorative lead-glazed ceramic plates and bowls not intended to be used for human food consumption.

An overly lenient voluntary product composition ID rule which gives or would give any toy product manufacturer the choice to refrain from properly identifying any and all products containing the hazardous material lead is highly irresponsible.

Given the number of serious instances involving children that have already occurred, I urge you to please, institute more mandatory lead product ID rules immediately.

Lastly, please, consider initiating a public education campaign to make parents and caregivers aware of how to properly identify lead in existing toy jewelry.

Thanks for taking the time to read my comments about improving labeling disclosure of hazardous products containing lead and banning the use of lead in toy jewelry.

Sincerely,

Sharon Richards Weiser
3483 Wilson Woods Dr
Columbus, OH 43204-3922

Stevenson, Todd A. 38

From: Joanne Cockerill [joannecockerill@hotmail.com]
Sent: Monday, March 12, 2007 11:22 AM
To: cpsc-os@cpsc.gov.
Subject: [Possibly SPAM (SPF):] - Children's Jewelry Containing Lead ANPR. - Sender is probably forged (SPF Softfail)

March 12, 2007
Acting Chairwoman Nancy A. Nord

Dear Nancy A. Nord,

By all means, keep people in the dark about the dangerous materials you put in children's toys. You'll burn in hell for eternity, or engender abysmal karma that will guarantee you many awesomely miserable future existences, but hey, you'll line your pockets now, and that's all that matters under this sacred capatalist system, right?

Sincerely,

Joanne Cockerill
91 N Fork Rd
Silver City, NM 88061-9771

March 12, 2007

Office of the Secretary
Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
cspc-os@cpsc.gov
Fax: 301-504-0127

Re: Children's Jewelry Containing Lead ANPR

Following the death of Minnesota four-year-old Jarnell Brown in early 2006 after swallowing a charm from a Reebok charm bracelet, students in one of my classes analyzed samples of inexpensive jewelry obtained from discount stores in Ashland, Ohio. The high levels of lead that they found in several of these items was the start of a continuing research effort on my part to determine the extent of potential hazards and the nature of the hazards posed. I am submitting these comments on the ANPR to encourage the adoption of a rule which will more effectively protect children from the hazards of lead.

Lead contamination of inexpensive children's and costume jewelry is widespread in the US:

My laboratory has tested 154 jewelry items purchased from 12 different retail chains. While most samples were obtained from stores in north central and southwestern Ohio, additional items were obtained from stores in Delaware, Florida, Michigan and Washington. Samples were purchased in late April and May 2006, and analyzed for total lead by digestion in nitric acid followed by atomic absorption spectrometry. While approximately 40 percent of the items tested met the current Interim Enforcement standard and were below 0.06% total lead, almost half of the items were heavily leaded, exceeding 80% lead by weight. The average lead content for all items tested was 46% and one or more heavily leaded items were found in samples from eleven of twelve retail stores and in each geographic location. Results are summarized in Table 1, and the majority have been published (Weidenhamer and Clement, 2007).

Items containing high total lead also contain high levels of accessible lead:

We have now tested a total of 52 high lead (>0.06% total lead) samples for accessible lead by leaching samples in 0.07 M hydrochloric acid. Forty-one of these samples exceeded the Interim Enforcement standard of 175 μg. Numerous samples exceeded 1000 μg accessible lead, and one

Table 1. Total lead content of 154 jewelry samples based on nitric acid digestion. Jewelry was purchased in May 2006 at retail stores in north central Ohio and selected other locations. Analyses were conducted by atomic absorption spectroscopy in Ashland University's Department of Chemistry Laboratories. A total of 182 assays were conducted because of selected analyses of different metallic components of certain items, such as multiple charms on the same bracelet.

			Lead Content, weight %			
	No. of Analyses	Avg % Pb	<0.06%	0.06-10%	10-80%	>80%
Anklet	1	0.02	1	0	0	0
Bracelet	70	50.0	23	2	13	31
Earrings	17	33.8	8	2	2	5
Hair accessories	5	35.9	2	1	0	2
Key Chain	38	61.8	8	3	2	25
Necklace	28	19.8	20	2	0	6
Pin	8	47.0	4	0	0	4
Ring	5	69.8	1	0	1	3
Other	10	52.7	3	1	0	6
Total	182	46.2	70	12	18	82

sample yielded 5204 µg lead. A damaged charm yielded 9996 µg lead, pointing to the potential hazards of ingesting items in which the surface coating has been damaged in some way. (Weidenhamer and Clement, 2007; Weidenhamer and Yost, unpublished results). Our results confirm those of CPSC staff (Cobb, 2006; Matheson, 2006) indicating that items containing more than 0.06% total lead are much more likely to have high levels of accessible lead.

The Interim Enforcement Policy is not working:

In the CPSC Briefing Package for the Sierra Club petition requesting a ban of lead in toy jewelry, several public comments that the Interim Enforcement Policy does not work are noted. Specifically noted were comments pointing to the occurrence of recalls as evidence that the policy does not work. The CPSC staff response disagreed with this characterization, noting that "The CPSC staff believes that the policy provides valuable information to manufacturers, importers, distributors and retailers and can only serve to improve the safety of children's metal jewelry. The staff does not consider the occurrence of recalls as evidence that the policy does not work. Most of the recent recalls were of products that entered the market before the Interim Enforcement Policy was put in place, and the staff believes that the recall process is an important mechanism for removing hazardous products from the market" (Briefing package, p. 78).

The staff response does not address two points which in my mind are crucial to the judgment that the Interim Enforcement Policy is not working.

(1) As indicated previously, results from my laboratory and those of Maas et al. (2005) show widespread contamination of jewelry sold in the United States with high levels of lead. *It is not the occurrence of recalls that is evidence a problem with the Interim Enforcement Policy, but rather the fact that such a high proportion of jewelry items sold in this country continue to*

violate this standard that is evidence that this policy has failed to achieve the objective of protecting children's health.

(2) Enforcement actions under the Interim Policy are not expeditious. In early December 2006, I submitted documentation on all samples tested in my laboratory, including photographs, amount of total lead found, and amount of accessible lead if tested. Not all of these samples fit the CPSC's definition of children's jewelry, but many do. In response to an email by a CPSC staff member, I provided purchase information (store addresses and date of purchase) for the highly leaded items. To this date, only one item, a Claudia Jublot ring sold by Big Lots, has been recalled. Many other items, such as the charm bracelet shown in Figure 1, continue to be sold and pose a clear threat to children's health. This criticism is not directed at individual CPSC staff members. Rather, it seems to me that the Interim Enforcement Policy itself does not facilitate expeditious responses to this public health hazard.

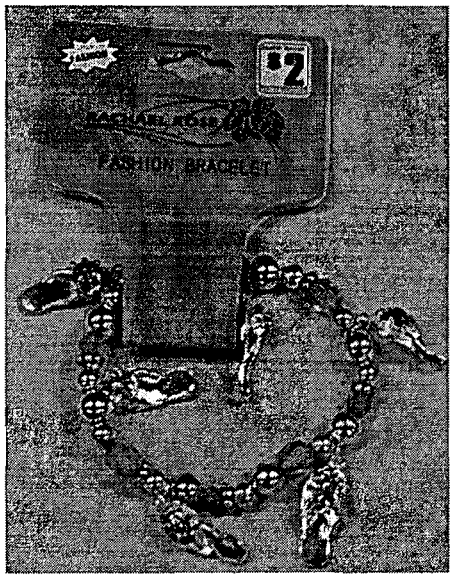

Figure 1. Flip Flop charm bracelet was purchased in May 2006 from a Family Dollar Store in Mansfield, OH. One charm was found to contain 93.5% total lead, while another yielded a total of 4150 μg lead by extraction in dilute 0.07N hydrochloric acid for 6 hours.

A ban on lead in children's jewelry is needed:

I support a rule declaring children's metal jewelry containing lead to be a banned hazardous substance. Furthermore, the correlation of accessible and total lead suggests that it would be reasonable to base such a ban on total lead concentrations, which would make a ban much easier to implement. I would urge that CPSC rules not preempt more stringent provisions of Illinois and California state laws that have been passed to deal with this problem, or the provisions of these laws that address non-metal components of jewelry items.

New analytical methods for lead in children's jewelry need to be approved:

If a ban is to work, one of the key issues which must be addressed is the approval of new analytical methods which will allow trained personnel working with state and local health departments to readily identify pieces of jewelry which contain hazardous levels of lead. This would allow such items to be more readily identified and quickly recalled. The Environmental Protection Agency allows the use of portable X-Ray Fluorescence devices (XRF) by trained

personnel to measure lead levels in the field, including lead concentrations in paint. Approving the use of these instruments for testing of jewelry samples would take advantage of an existing infrastructure of instrumentation and trained personnel and thus minimize the cost of implementing such testing. Items identified as suspect by such screening could be sent to a certified NLLAP laboratory (National Lead Laboratory Accreditation Program) for analysis of total lead if necessary. Allowing analyses by NLLAP certified labs to be used as the basis for enforcement actions would facilitate expeditious removal of contaminated items from the marketplace.

A ban on leaded children's jewelry does not go far enough:

For children up to the age of 18, the CPSC has estimated that ingestion of jewelry items resulted in 19,859 emergency room visits for the period 2000-2005 (O'Brien 2006, Table 2). For children 21 months old and younger, the group most at risk to the neurological effects of lead, the CPSC has estimated that ingestion of jewelry items resulted in 4,628 emergency room visits for the period 2000-2005 (O'Brien 2006, Table 3). It is unclear, however, what proportion of these visits are the result of ingestion of items classified as *children's* jewelry. Toddlers visit the ER for ingestion of coins, marbles, nails and screws, and batteries – is it safe to presume that all of the jewelry items they ingest will be from jewelry intended for children? Perhaps most, but there is no data in the Briefing Package that allows estimation of a firm percentage.

Furthermore, work in my laboratory identified very high lead concentrations in many key chain pendants. Key chains are not typically considered children's jewelry items, though many children carry them, and presumably would not be subject to the proposed rule. However, one only need to visit a local grocery store to watch mothers pushing toddlers in grocery carts who are sometimes jingling keys on chains and on occasion mouthing the key chains. The key chain shown in Figure 2 illustrates this hazard. Analysis of this particular pendant showed it to be pure lead (100.4%), and the pendant itself was so pliable that pieces could easily be broken off of it. I encourage the CPSC to consider extending the rules on lead content to all consumer goods that children might readily come in contact with.

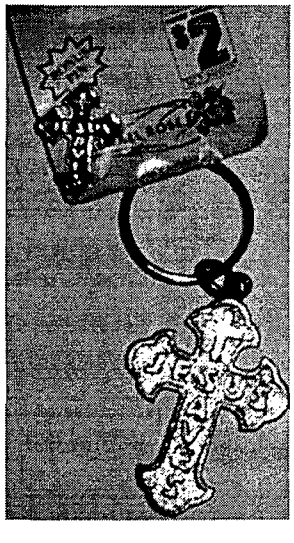

Figure 2. This key chain was purchased in April 2006 from a Family Dollar Store in Ashland, OH. Analysis of the pendant showed it to be pure lead (100.4%)

References:

Cobb, D. 2006. CPSC Memorandum to Kristina M. Hatlelid, "Summary of Test Results for Lead in Children's Metal Jewelry."

Maas R.P., Patch S.C., Pandolfo T.J., Druhan J.L., Gandy N.F. 2005. Lead content and exposure from children's and adult's jewelry products. *Bulletin of Environmental Contamination and Toxicology* 74, 437-444.

Matheson, J. 2006. CPSC Memorandum to Kristina M. Hatlelid, "Petition HP06-01 lead in jewelry toxicity review."

O'Brien, C. 2006. CPSC Memorandum to Kristina Hatlelid, "Analysis of data on child ingestions."

Weidenhamer, J. and M. Clement. 2007. Widespread lead contamination of imported low-cost jewelry in the US. *Chemosphere,* 67: 961-965.

Sincerely,

Jeffrey D. Weidenhamer, Ph.D.
Professor and Chair, Department of Chemistry
Ashland University

Stevenson, Todd A.

From: Jeff Weidenhamer [JWEIDEN@ashland.edu]
Sent: Monday, March 12, 2007 11:37 AM
To: Stevenson, Todd A.
Subject: Children's Jewelry Containing Lead ANPR
Attachments: ANPR Comments.Weidenhamer.doc

Please see attached file. A copy of this letter will also be submitted via fax.

Sincerely,

Jeffrey D. Weidenhamer
Professor & Chair
Department of Chemistry
Ashland University

KELLER AND HECKMAN LLP
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March 9, 2007

Electronic Mail and Overnight Delivery

Todd A. Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814
cpsc-os@cpsc.gov

Re: Children's Jewelry Containing Lead ANPR

Dear Secretary Stevenson:

On behalf of the Fashion Jewelry Trade Association, LLC ("FJTA"), we are pleased to have this opportunity to submit comments in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") *Children's Jewelry Containing Lead; Advance Notice of Proposed Rulemaking; Request for Comments and Information*, 72 Fed. Reg. 920 (January 9, 2007) ("ANPRM"). FJTA members include many of the leading suppliers and retailers of fashion jewelry.[1] It is important to note that FJTA's members generally do not make or distribute either jewelry intended for young children, toy jewelry or "trinket" jewelry; fashion jewelry products are generally sold through department and accessories stores and other outlets principally geared to adults and teens.

FJTA and its members have a strong commitment to consumer safety, and support risk-based, sensible national limits on the content of lead in jewelry. We urge the Commission to adopt as a national standard California's Lead-Containing Jewelry law, commonly known as Assembly Bill 1681 (AB 1681)[2] pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1261-1278. AB 1681 prohibits the manufacture, shipment, sale or offer for sale in California of children's jewelry made with metal and plastic components containing more than 0.06 percent or 600 parts per million (ppm) lead or glass or crystal components weighing more

[1] The organized fashion jewelry industry consists predominantly of small businesses. FJTA's membership, for example, includes in excess of 200 companies that manufacture or distribute fashion jewelry in the United States. In addition, many "do-it-yourself" jewelry stores now exist across the country and there is a vibrant crafts industry as well.

[2] Cal. Health & Safety Code §§ 25214.1-.4.

than 1.0 grams by weight unless the glass or crystal components contain less than 0.02 percent or 200 ppm lead. In addition, AB 1681 phases in a 6.0 percent lead content limit for properly plated metal alloys, a 1.5% limit for unplated metal, as well as lead content limits for other materials used in adult jewelry. *See* Table 3, *infra.*

As detailed below, the process leading to adoption of AB 1681 evaluated lead toxicology, testing options, industry impact, and practical implementation considerations. Government representatives, environmental groups and industry were involved. FJTA therefore recommends that the Commission adopt the provisions of AB 1681 as a national standard. A national standard is necessary and desirable to provide reasonable protection to all consumers and to avoid conflicting state laws.

I. Overview of the Fashion Jewelry Industry

The fashion jewelry industry is a dynamic, highly competitive segment of the fashion industry. Accessories Magazine recently reported that the industry is responsible for approximately $8.3 billion in sales.[3] Product innovation, agility, and flexibility are required to successfully implement various market-driven style changes throughout the year. Most companies offer products for the spring/summer and fall/winter seasons, and also offer a variety of seasonal products geared to various holidays (Valentine's Day, Easter, Mother's Day, Halloween, Thanksgiving and Christmas, to name a few). Without flexibility in design, companies will not survive in this highly diverse and competitive industry.

With the exception of a few significant multi-national vendors, U. S. fashion jewelry vendors are small businesses, many of which remain family owned. An overview of the industry by company size, number of employees, total sales, and total number of items sold, is outlined in Table 1, based on a brief survey to which approximately 70 industry members responded. While not offering a complete view of the fashion jewelry industry, it is a useful and representative snapshot of the industry makeup.

TABLE 1

Profile of Small Businesses in the Fashion Jewelry Industry*			
2006 Revenues ($ millions)	Number of Companies	Sales Volume (millions of pieces)	Number of Employees
0 – 1	30	.18 – .9	2 – 35
1 – 5	27	.107 – 4	4 – 50
5 – 10	7	1.5 – 6	6 – 250
10 – 25	8	3 – 70	7 – 40

*Based on an anonymous survey of companies exhibiting at the International Fashion Jewelry and Accessory Group (IFJAG) Trade Show held February 13-17, 2007 in Warwick, R.I.

[3] *Accessories Magazine's 2006 Census Report: Jewelry, Key Retail Trends 2006*, Accessories Magazine at 46 (January 2007).

These companies sell annually many millions of pieces of jewelry, comprised of many different components.

Members of the FJTA have a strong interest in consumer protection. Many FJTA members participated in the mediation with the California Attorney General, retailers, and private citizen groups to resolve litigation alleging exposure to lead from fashion jewelry under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). The outcome was a court approved consent agreement entered into on February 21, 2006, and amended on June 15, 2006, which restricts lead content in metal and non-metal jewelry components, with more restrictive levels for jewelry intended for children 6 and younger, and strict implementation deadlines for both. The lead standards developed during this mediation formed the basis for California's landmark jewelry standard. Several other states are contemplating statutes regulating lead content..[4] However, because of nationwide distribution and global sourcing, a national standard is needed to establish a consistent level of consumer protection and to prevent chaos.

A. Fashion Jewelry

Fashion jewelry is an everyday fashion item made from a variety of materials. It is more affordable than jewelry made from precious metals and gems and can be made from a wide variety of materials. Most often, the jewelry is made from a base metal that is plated with copper, nickel or another metal, and a finish coat of silver or gold. Jewelry can also employ glass, crystal, ceramic, plastic, and other natural and synthetic components. It can be embellished with paints, enamels, and other such materials. Products include bracelets, charms, cuffs, earrings, hair pieces, necklaces, pins, rings, and other fashion accessories. These pieces are divided into two basic product types: "core/basic" products and "fashion/trend" jewelry. Core/basic products, such as faux pearl necklaces, have no or limited seasonality, experiencing few design changes over time. By contrast, fashion/trend jewelry is very dynamic with multiple product design changes during the year. Given this disparate variety of jewelry products, even jewelry vendors of modest size may market more than a million items involving up to twenty-five thousand stock keeping units (SKUs) in a calendar year.

It is important to distinguish the fashion jewelry that FJTA members manufacture and distribute from children's or toy jewelry or so-called trinket jewelry. FJTA members do not generally manufacture or distribute jewelry intended to be marketed or sold to young children (under 6); the vast majority of fashion jewelry products is geared to adults, teens and tweens. Children's jewelry is generally sold in children's stores or areas of retail outlets that are specifically designated for children under 6 and tend to range in price from $1 to $8, although

[4] *See* H.F. 1656, 85th Sess. (MN. 2007).

some items have been sold at significantly higher prices. Trinket jewelry includes jewelry sold in vending machines or given away at no cost in promotions.

Fashion jewelry, on the other hand, is sold primarily in jewelry-specific areas of various retail outlets, and in jewelry and accessory specialty stores, and typically range in price from $10 to $24 although, again, individual pieces can cost significantly more, depending on the item. Fashion jewelry may be sold in department, specialty and chain stores, mass retailers, and even jewelry stores, as well as via other outlets such as craft shows. Table 2 sets out fashion jewelry sales by retail outlets based on published data.

TABLE 2

2005 Fashion Jewelry Market Share By Retail Outlet[5]		
	Total U.S. Retail Sales	Volume ($billions)
Department Stores	29%	2.6
Specialty Stores	20%	1.7
Specialty Chain Stores	14%	1.04
Mass Retailers	18%	1.60
Jewelry Stores	4%	.327
All Others (craft shows, etc.)	15%	1.07
TOTAL	100%	8.34

B. Locations of Manufacture

As far back as the 1800s, fashion jewelry was designed and manufactured in Rhode Island and New York. While some fashion jewelry is still made in the United States, most of the manufacture and assembly of jewelry distributed nationally has now shifted to Asia. This manufacturing shift is relatively recent, occurring in the past decade. The People's Republic of China ("PRC") is the largest worldwide supplier, with significant suppliers located in Taiwan, Korea, Thailand, India, and the Philippines. Vendors for the most part have historically consisted of small businesses. This is especially true in Asia where many of the factories in turn work on a subcontract basis with small manufacturing and assembly shops.

C. Sourcing Concerns

Fashion jewelry sourcing is one of the most critical, yet potentially volatile facets of the industry. Fashion jewelry can be sourced in a variety of ways. Few vendors have their own manufacturing plants here in the United States or elsewhere. Most vendors contract with foreign

[5] Reproduced from *Accessories Magazine's 2006 Census Report: Jewelry, Key Retail Trends 2006*, *supra* note 3.

factories or source fashion jewelry through brokers in the PRC and other Asian countries. These factories and brokers supply jewelry to vendors in the US and other parts of the world. Few vendors have exclusive arrangements with these factories and brokers.

Brokers solicit bids from small and large assemblers and manufacturers, which in turn procure the various components and raw materials from their suppliers. If product is re-ordered, the broker may or may not go back to the same suppliers that were used previously. This may be because the original supplier is not price competitive, is too busy with other orders or is no longer in business, or the quality is not satisfactory. Even large factories can subcontract out to others who may cast, plate, or assemble jewelry. These smaller entities may be factories or may be families working in their homes.

Global sourcing realities are another reason why a national standard is desirable. FJTA has sought to increase awareness among overseas vendors about the growing concerns here in the U.S. about lead use in jewelry and the need for compliance with the California standards. The Association is hosting an educational session in May to educate the industry about lead content limits. Invitations to this event have been sent to overseas suppliers of jewelry and jewelry components. FJTA would welcome further discussion with the Commission about ways to increase awareness overseas of the need to decrease the amount of lead in jewelry components.

D. Lead Remains Important in Metal Jewelry Design and Components

Jewelry is made with a diverse matrix of components using an array of different materials sourced from numerous suppliers in many countries. Component selection takes into account fashion trends, quality, availability, and price. The vendor may supply the design or select product offered by the factory or broker. The actual design of the jewelry pieces can range from quite simple to extremely complex. Many designs require extensive and expensive models to be created by skilled model makers, and others require intensive labor in assembling various components into the final design. With few exceptions, metal used in jewelry is plated with a finish coat of silver or gold on top of undercoats of copper and nickel (or another metal for "nickel-free" jewelry). The lead in the metal portion of jewelry imparts important characteristics to the final product. Performance and design options could be seriously compromised if the lead content falls below 6.0%.

Most jewelry is made with both metallic and non-metallic components. White metal, an alloy of tin, antimony, and lead, is the most common metal for castings. Up until recently, the most common white metal was "36 metal" (approximately 36% tin, 5% antimony and the remainder lead). "70 metal" (approximately 70% tin, 5-7% antimony, and the remainder lead) and "88 metal" (approximately 88-90% tin, 9% lead, 2.5% antimony, and up to 0.5% cadmium) have also been used. Lead imparts many desirable properties which allow for intricate designs. Lead lowers the melting temperature of the alloy thereby enhancing its flowability. Casting equipment designed for use with higher lead alloys must be modified to accommodate alloys

with lower lead content. Lead also facilitates finishing steps, such as polishing. Alloys with lower lead content will require additional finishing compared to the higher lead alloys.

Zinc alloys are sometimes used in fashion jewelry, for example. These alloys are primarily zinc and may contain some copper, aluminum, magnesium, tin, cadmium and lead (at a nominal level). These materials are more expensive and do not cast or plate as well as white metal. In addition, because they require higher casting temperatures, molds must be replaced more frequently, again at added cost. Brass and steel are commonly used for chains and closures and joiners such as lobster claws, spring rings, and jump rings, and sometimes for castings and stampings. Brass and steel, however, are not suitable replacements for white metal in most types of fashion jewelry because they can only be stamped, not cast, at the price point at which fashion jewelry is typically sold.

With respect to the non-metallic components such as beads, pearls, stones, crystals, ribbons, and cords, vendors will specify certain criteria such as size, shape, color, reflectivity, luster and quality. Notably, AB 1681 addresses various components used to produce jewelry intended for children under 6, not just metal, and also establishes specific, higher lead limits in various components of jewelry intended for other consumers.

II. The CPSC Should Adopt a Uniform Federal Standard Based on AB 1681

The FJTA strongly supports the adoption of a mandatory Federal rule based on California's AB 1681, which sets out lead content limits for jewelry intended for young children under 6, and separate limits for other jewelry, as follows:

TABLE 3

AB 1681 Jewelry Material Standards	
Material	Limit
Children's Jewelry	
Properly plated metal	Maximum lead content: 0.06% (600 ppm)
Plastic and rubber components	Maximum lead content: 0.06% (600 ppm)
Glass or crystal components	Maximum weight of 1 gram unless component contains less than 0.02% (200 ppm) lead
Materials not listed	Maximum lead content: 0.06% (600 ppm)
Body Piercing Jewelry (placement in a new piercing or a mucous membrane)	
Surgical implant stainless steel, Surgical implant grade of titanium, Niobium, Solid 14 karat or higher white or yell nickel-free gold, Solid platinum, and A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE),if the plastic contains no intentionally added lead.	No limits

TABLE 3

AB 1681 Jewelry Material Standards	
Material	Limit
All Other Jewelry	
Stainless or surgical steel, Karat Gold, Sterling Silver, Platinum, Palladium, Iridium, Ruthenium, Rhodium, or Osmium	No limits
Properly plated metal components *After 08/31/2009*	Maximum lead content 10% (Use of 88 metal) *Maximum lead content 6% (Use of 92 metal)*
Unplated metal components	Maximum lead content 1.5%
Plastic or rubber components *After 08/31/09*	Maximum lead content 0.06% (600 ppm) *Maximum lead content 0.02% (200 ppm)*
Dyes and surface coatings	Maximum lead content 0.06% (600 ppm)
Crystal, glass, ceramic, cultured pearls and gemstones[6]	No limits
Naturally occurring materials	No limits
Materials not listed	0.06% (600 ppm)

The California law is based on standards developed during the mediation of an amended consent agreement in *People v. Burlington Coat Factory Warehouse Corporation, et al.*,[7] to resolve litigation concerning alleged exposure to lead from jewelry in violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65.[8] Many of FJTA's members are signatories to the consent agreement, and were closely involved in discussions leading to enactment of AB 1681, which was based on this consent agreement. California's Proposition 65 has a mandatory 1000-fold safety factor for reproductive toxins, including lead.[9] The standards developed pursuant to the settlement negotiations underwent a thorough evaluation by all the potential litigants and were determined to be the most stringent standards feasible and economically achievable by the jewelry industry. They were also determined to result in exposures from lead in jewelry to below 0.5 µg/day, the Maximum Allowable Dose Level (MADL) under Proposition 65.

[6] Some gemstones are not allowed. See AB 1681 for details.

[7] Amended Consent Agreement, *People v. Burlington Coat Factory Warehouse Corp. et al.*, Case No. RG 04-162075 (Alameda Superior Court June 15, 2006); Cal. Health & Safety Code § 25214.1(a).

[8] Cal. Health & Safety Code §§ 25249.5 - 25249.13.

[9] Cal. Health & Safety Code § 25249.10(c); 22 Code Cal. Regs. § 12000.

The FJTA submits that AB 1681 also meets the criteria set out in FHSA Section 3(i)(2).[10] First, the lead content limits for children's jewelry established under AB 1681 adequately reduce the risk of exposure and injury from lead in children's jewelry by limiting lead content to 0.06%, consistent with the staff's conclusion that there is a reduced chance of children ingesting hazardous levels of accessible lead (175 μg) where lead content is under 0.06%. Second, the adoption of the phased-in limits on lead content and distinctions between plated and unplated metal in other jewelry reflected in AB 1681 will further reduce exposure to lead to reasonable and technically achievable limits, which still allow fashion jewelry makers to utilize lead to achieve desired performance characteristics central to this dynamic industry. Third, the benefits expected from compliance with the lead-content limits set out in AB 1681 bear a reasonable relationship to the costs imposed on the fashion jewelry industry as opposed to any other alternatives CPSC might consider.

AB 1681 references two Environmental Protection Agency (EPA) standards, methods 3050B and 3051, as does the consent agreement mentioned earlier. Total lead testing of components is the only sensible way to test for compliance with lead limits because of global sourcing of jewelry. The total acid test is widely available, reliable and relatively inexpensive. Testing of components allows for flexibility in design and responds to the fact that different components are subject to different limits on lead content. FJTA is aware that in other instances the Commission has not specified a test method, but merely relied on the regulated industry to achieve compliance in the most appropriate fashion. If a test method is adopted, however, the Commission should rely on the method specified in the consent agreement and AB 1681, as the methods specified were determined to be suitable and appropriate for the purpose of verifying lead limits in jewelry.

While the importance of the California jewelry market makes AB 1681 a *de facto* national standard, it does not prevent the promulgation of disparate and disproportionate standards by other states. The jewelry industry with its precariously low margins simply cannot afford to sell one type of jewelry in California and another in other states. A case in point is the state of Illinois which recently enacted the Lead Poisoning Prevention Act.[11] The Illinois law bans the use of lead in excess of 0.06% in any item, including jewelry or toys, intended for children. However, it requires that items sold to the general public, including jewelry, which contain more than 0.06% lead bear a warning label.

By imposing a 600 ppm limit on "any item containing or coated with lead," and a warning requirement on non-children's items that exceed this limit, the Illinois statute fails to distinguish between the varying risks of exposure among the different segments of the population (young children under 6 versus other consumers), or from different materials (*e.g.*,

[10] 15 U.S.C. §1262(i)(2).

[11] H.B. 4853, 94th Leg. Sess. (Ill. 2006) (codified at 410 Ill. Comp. Stat. § 45/2-45/12.1) .

properly plated metal versus unplated metal in jewelry sold to the general public), in contrast to California's AB 1681. Particularly with regards to metal jewelry components in products not designed for children under 6, higher lead content limits in plated metal components are directly related to performance characteristics. By providing an 18-month phase-in period for the jewelry industry to implement a 6.0% limit for properly plated jewelry metal components, AB 1681 recognizes the challenges faced by the jewelry industry in developing and sourcing alloys with reduced lead content that also provide enhanced castability and flowability, among other performance characteristics. This phase-in will both allow foundries to develop new manufacturing methods for lower lead alloys, and also allow retailers to sell-through their existing stocks of jewelry. As discussed further below, the Illinois statute's labeling requirement also is inordinately burdensome to the fashion jewelry industry without being useful to most consumers.

A. Precautionary Labeling

The FJTA strongly opposes precautionary labeling of jewelry that exceeds 0.06% lead. Aside from the exorbitant cost to the industry, precautionary labeling raises the same compelling deficiencies the CPSC Human Factors staff identified during the metal-cored candlewick rulemaking;[12] which led the Commission to conclude that precautionary labeling was not an acceptable strategy for protecting vulnerable populations from lead poisoning caused by burning candles with lead-cored wicks.[13] In order to provide effective warning of lead hazards from jewelry, a label would have to be in view at all times. As consumers purchase jewelry for personal decorative purposes, it is unreasonable to expect that they would retain the precautionary label. In addition, the size, configuration and conditions of sale for most jewelry pieces prohibits the placement of a conspicuous label on the product. Jewelry is seldom sold in packages or boxes. Thus, there is no principal display panel on which to display a label or warning on most such items. Fashion jewelry items are small, typically with a very small tag or adhesive label indicating only the price.

Even for those few products that may be sold with outer packaging, precautionary labeling is unlikely to prove effective in reducing the risk of ingestion exposure to lead. Although such a label may be read when the product is initially purchased, jewelry consumers often discard these packages and store their jewelry in specially-designated cases or compartments. There is no guarantee that individuals other than the initial user who have access to the outer package will be made aware of the hazard. The 5 inch by 5 inch label specified

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[12] *See* Memorandum from Carolyn Meiers, Engineering Psychologist, Human Factors, to Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, *Labeling of Candles with Lead-cored Wicks (Petition HP 00–3)*, October 18, 2000.

[13] *Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks*, 66 Fed. Reg. 19, 142, 19143-44 (April 18, 2003) (codified at 16 C.F.R. § 1500.12).

under the Illinois law will not only hide the product below it (many jewelry items, like earrings, are displayed on cards smaller than the required label), it will assuredly unduly alarm consumers because the warning required is not related to the actual risk presented. The result could well be the virtual elimination of the fashion jewelry industry and the attendant jobs and economic benefit this important industry brings to the U.S. economy. The California standards adequately protect the public without a warning label and differentiate between products and populations.

B. Age Determination and Exposure Risks

AB 1681 prescribes stricter standards for children 6 and under on the basis of CPSC and other studies demonstrating that the frequency and duration of mouthing declines dramatically by the age of 3.[14] The industry agreed to an age cut-off at 6 and under because department stores have clearly designated areas for jewelry and other apparel intended for young children (6 and under), and because these items can be easily distinguished by size.

The FJTA also agrees with the CPSC Staff that a price cut-off would not be relevant, implementable or sensible.[15] First, as Accessories Magazine data indicates, much non-children's jewelry is sold well below the $20 threshold proposed by the Sierra Club, while the CPSC's own recall experience suggests that some children's jewelry is actually relatively expensive. Second, jewelry prices tend to fluctuate because of seasonal buying trends, store discounts or rebates, and other market forces. Moreover, a price cut-off would be difficult, if not impossible to enforce against non-traditional sales outlets such as craft shows, thrift shops, and other outlets. AB 1681 defines "children's jewelry" in a common-sense fashion, and the Commission should adopt its definition in this matter:

(c) 'Children' means children aged six and younger.

(d) 'Children's jewelry' means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

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[14] During negotiation of the *Burlington Coat Factory Warehouse* settlement, the industry could have made a case for the stricter standards applying only to jewelry intended for children three years old and younger, as the CPSC has done with the choking hazards for children 3 and under. *See* 16 C.F.R. § 1501.

[15] *See* Memorandum from Kristina Hatlelid, Ph.D., M.P.H., Toxicologist, to Mary Ann Danello, Ph.D., Associate Executive Director, Directorate for Health Sciences, *Response to Public Comments on Petition HP 06-1*, p. 5 November 28, 2006

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalogue, or online Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalogue, or online Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.[16]

C. *A Preemptive National Standard is Required*

The FJTA is not aware of any voluntary lead-content standards currently under development. As noted earlier, AB 1681 serves as a *de facto* national standard, but a national standard that preempts inconsistent state law is desirable from a variety of perspectives. While voluntary action is often preferred because standards can be put in place quickly, FJTA submits that in this case a national standard is desirable to allow all consumers in the U.S. to benefit from the same set of standards to address potential risks of lead in jewelry. This should, as it did in California, result in the adoption of standards for plated and unplated jewelry and jewelry components for most jewelry, with more stringent limits for jewelry intended for children under 6. In this regard, while we have pointed out inconsistencies between the California law and the Illinois law, laws setting still other standards or requirements are being introduced. This poses an enormous burden to the fashion jewelry industry without offering added, reasonable protection to consumers.[17]

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[16] Cal. Health & Safety Code §§ 25214.1(c), (d).

[17] For example, a bill recently introduced in the state of Vermont, S. 152, imposes limits on lead in children's products to no more than .001% lead. Children's products are defined to include any consumer product marketed for use by children under age 6, or whose substantial use by children under 6 is likely and foreseeable, including, among other things, jewelry, but specifically defines jewelry priced at $20.00 or less as a "children's product." As indicated above, price point is not an indication of whether jewelry is marketed to children in the fashion jewelry industry.

A national standard will also do more to ensure the importation of compliant jewelry components into the United States than a voluntary standard or divergent state laws, and will allow the CPSC to coordinate with its counterparts internationally on educational and other initiatives. The CPSC has pursued cooperative agreements with its foreign counterparts that are intended to encourage the sharing of product safety information between countries. To date, the CPSC has entered into Memorandum of Understanding (MOU) or Guidelines for Information Exchange with the European Commission (EC), Canada, Mexico, Korea, India and China, Costa Rica, Israel, and Taiwan. This list includes many of the regions that are sources of jewelry and jewelry components.

These MOUs, including the *Guidelines For Information Exchange and on Administrative Cooperation Between the U.S. Consumer Product Safety Commission and the Directorate-General Health and Consumer Protection of the European Commission*, generally call for the regulatory authorities in each country to share information relating to:[18]

- Information on product recalls of consumer products known to have been manufactured, advertised or distributed in participating countries' markets;
- Post-marketing data and information that could have an impact on the public health and safety, such as laboratory testing results or information about regulatory actions including market withdrawals and/or product recalls; and
- Information on products known by a participating country to be pending exportation to the other participating country that are prohibited, or fail to comply with an applicable law or regulation in the exporting Participant's country.

In addition, without the preemptive effects of a national standard promulgated by the CPSC, the fashion jewelry industry will continue to face an increasing number of inconsistent and burdensome legislative initiatives.

Adoption of the provisions of AB 1681, including a 0.06 percent lead limit on metal jewelry that is "made for, marketed for use by, or marketed to" children aged six years or younger, defined in accordance with the California standard, would be fully protective of young consumers.[19] In addition, the FJTA urges the CPSC to adopt the California limits for jewelry marketed or sold to persons over age 6, as indicated in Table 3, as a national standard.

III. Conclusion

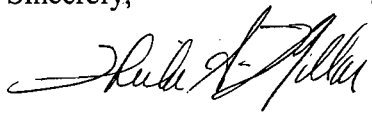
FJTA wishes again to express its appreciation for the opportunity to submit comment on this ANPRM. Reducing exposures of consumers to lead in jewelry is an important goal of the

[18] *See* http://www.cpsc.gov/cpscpub/prerel/prhtml05/05120.pdf.

[19] *See* Cal. Health & Safety Code § 25214.1(c) and (d).

FJTA and the fashion industry as a whole. FJTA and its members have demonstrated their commitment to this goal through their actions in California. Accordingly, the FJTA reiterates its support for a 0.06% limit on the lead content in jewelry sold or marketed to children age six and under. In fact, the FJTA strongly supports the adoption of standards modeled on California's AB 1681, including the phased-in limits for jewelry marketed to those over age 6, as a national standard. The FJTA and the fashion jewelry industry look forward to working with the Commission on this very important rulemaking.

Sincerely,



Sheila A. Millar

cc: Kristina Hatlelid, U.S. Consumer Product Safety Commission
Michael Gale, Fashion Jewelry Trade Association
Gary Rose, Fashion Jewelry Trade Association